115.

SUPREME COURT OF THE UNITED STATES.

No. 29.

ADOLPHUS DURANT, COMPL'T AND APP'T,

vs.

SAMUEL LAWRENCE, JOHN NESMITH, AND DANIEL SAUNDERS, AND EDWARD S. RAND, CHARLES S. STORROW, AND THE ESSEX COM'Y.

APPEAL FROM THE CIRCUIT COURT U. S. FOR MASSACHUSETTS.

INDEX.

	Original.	Print.
Style of court, and parties	1	1
Bill of complaint	2	1
Exhibit A	14	16
Answer of the Essex Company	15	16
" Daniel Saunders	22	24
" Edward S. Rand	24	27
" Chas. S. Storrow	29	32
" Stephen Barker	35	39
" Samuel Lawrence	40	45
Demurrer of Daniel Saunders, jr	45	49
Answer of John Nesmith	44	49
Bill dismissed as to S. Barker	46	53
" " D'l Saunders, jr	46	53
Replication to answer of Essex Company	47	53
" " D'l Saunders	47	53
" " Edw'd S. Rand	48	54
" " Chas. S. Storrow	48	55
" " Sam'l Lawrence	49	55
" " John Nesmith	49	56
Stipulation of counsel	50	57
Amended answer of Essex Com'y	50	57
" " Daniel Saunders	62	70
Replication to amended answer of D'l Saunders	68	77
Interlocutory decree of court	68	78
Report of master	70	78
Decree dismissing bill of complaint	72	80

[REC. XXIX, D. T., 1856.]

	Original.	Print.
Appeal prayed and allowed	72-3	80
Clerk's certificate	73	80
Complainant's testimony.		
Interrogatories to Stephen Barker	75	81
Deposition of " "	93	102
Interrogatories to And. Emerson et al	122	136
Deposition of And. Emerson	128	142
" " Seth Dewing	132	146
" " Luther Crane	134	148
" " Joshua Norton, jr	135	150
Interrogatories to Josiah G. White	139	153
" " Stephen Webb	140	154
" " Sam'l Whitwell et al	141	155
Deposition of Josiah G. White	141	156
" " Stephen Webb	143	157
" " Sam'l Whitwell	144	158
Interrogatories to Wm. Swan et al	147	161
Deposition of Daniel Merrill	150	164
" " Leonard Wheeler	152	166
" " Phineas M. Gage	154	168
Interrogatories to Daniel Saunders, jr	158	172
Deposition of Daniel Saunders, jr	161	175
Interrogatories to Stephen Barker	165	179
Deposition of Stephen Barker	168	182
Interrogatories to George Rogers	172	186
Deposition of George Rogers	173	187
Respondents' testimony.		
Interrogatories to Seth Dewing	177	191
Deposition of Seth Dewing	181	195
Interrogatories to Thos. J. Richardson	187	201
" " J. G. White	189	203
Deposition of Josiah G. White	189	203
" " Thos. J. Richardson	190	204
Interrogatories to Benjamin R. Curtis	194	207
Deposition of Benjamin R. Curtis	195	208
Interrogatories to Nathan W. Hazen	199	211
Deposition of Nathan W. Hazen	202	215
Interrogatories to Robert Farley	205	218
" " John T. Morse	206	219
" " William Beals	207	220
" " Jacob Howe	209	222
" " Josiah Dearborn	211	224
" " E. H. Safford	212	225
" " Ephraim Brown, jr	213	226
Deposition of Robert Farley	213	226
" " John T. Morse	214	227
" " William Beals	220	233
" " Josiah Dearborn	222	236
" " Jacob How	225	238

	Original.	Print.
Deposition of E. H. Safford	228	241
" " Ephraim Brown, jr.	228	242
Interrogatories to John Tenney	235	247
" " J. W. Carlton	235	247
Deposition of John Tenney	245	259
" " J. W. Carlton	253	267
Interrogatories to Joseph Foster	259	273
" " George Rogers	265	279
Deposition of Joseph Foster	266	281
" " George Rogers	271	286
Exhibits.		
Agreement that accounts need not be printed	273	287
A. Durant to A. Marland—Deed	273	288
Assignment to Robert Farley	274	289
" R. Farley to Essex Comp'y	275	290
" " " "	275	290
Sam'l Hubbard, Benj'n D. Greene, Wm. P. Greene, trustees, to Rob't Farley	277	292
Joseph Foster to R. Farley	278	293
Schedule A	279	294
Wm. Beals' order to Durant, machine A	280	295
Quit-claim deed, S. Barker to S. Lawrence & al	280	296
A. Durant to S. Lawrence et al—Deed	282	297
Original draft of the bond proposed to be signed by S. Lawrence et al., March 18, 1845	284	299
Jesse Sargent to Stephen Barker	285	301
S. Barker to S. Lawrence & al	286	302
Conditions of assignees' sale of the real estate and machinery of paper-mills of A. Durant, May 31st, 1844	288	304
Mort. deed, A. Durant to John Tenney	288	304
Assignment to Essex Co. of same	290	306
A. Durant's assignee, (J. How,) to J. Foster—Deed	290	306
A. Durant's deed to Jesse Sargent, A	292	309
Paper-mills at auction	293	310
Durant's letter to Dewing	294	310
A. Durant to Mercantile Bank, Salem	297	312
Assignment to E. S. Rand & al., trustees	298	313
E. S. Rand et al. to Essex Co	299	314
A. Durant to Abigail Durant	300	315
Assignment to E. S. Rand et al	301	317
Assigned to Essex Co	302	317
S. Lawrence & al. to Ed. S. Rand & al.—Deeds	302	318
A. Durant to Joseph Foster	304	320
J. Foster & al. to Charlestown Bank	306	322
Charlestown Bank to S. Hubbard & al., trustees	307	322
S. Hubbard & al. trustees, vs. A. Durant	307	323
Hubbard & al. vs. Durant—Writ	309	325
Judgment, Foster & al. vs. Durant	310	327
Award	311	328

	Original.	Print.
Tenney agreement	312	328
Durant to Dewing	312	328
A. Durant to Seth Dewing	312	329
How's notice to foreclose mort. on machine	313	329
Return of submission	314	330
Agreem't in circuit court that parties may print, &c	315	331
Agreem't by respondents that compl't may file, &c	316	332
Abstracts of bills with Tenney, &c	317	332
Respondent's protest against commission to take testimony of Stephen Barker	318	333
Interrogatories to Stephen Barker	320	335
Cross-interrogatories " "	321	335
Interrogatories to Miss C. Barker	322	337
Cross-interrogatories " "	323	338
Deposition of Stephen Barker	324	339
Deposition of Miss C. Barker	327	342
Clerk's certificate	335	346

UNITED STATES OF AMERICA,
Massachusetts District.

May Term, 1855.

At a Circuit Court of the United States, for the First Circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five. Before the Honorable Benjamin R. Curtis, Associate Justice, and the Honorable Peley Sprague, District Judge:

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al., } In equity,

The bill of complaint in this case was filed in the clerk's office on the eleventh day of October, A. D. 1847, and is in the words following, to wit:

To the Honorable the Justices of the Circuit Court of the United States for the District of Massachusetts.

Adolphus Durant, of Hartford, in the county of Hartford, and State of Connecticut, a citizen of said State, brings this, his bill of complaint, against Samuel Lawrence and John Nesmith, of Lowell, in the county of Middlesex, in the State of Massachusetts; Daniel Saunders, of Lawrence, in the county of Essex, in said State; Stephen Barker, of Methuen, in the county of Essex, in said State; Charles S. Storrow, of Lawrence, in the said county of Essex; Edward S. Rand, of Boston, in the county of Suffolk, in said State; Daniel Saunders, jr., of Andover, in said county of Essex, all citizens of the State of Massachusetts; and the Essex Company, a corporation duly established by authority of the Commonwealth of Massachusetts.

And thereupon your orator complains and says, that he was the owner and in possession of certain tracts or parcels of land, with the buildings and improvements thereon, situate in the town of Methuen, now the town of Lawrence, in the county of Essex, in the said State of Massachusetts, bounded and described as follows, to wit: The first piece contains about six acres, with a dwelling-house and barn thereon, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage. The second piece of land lies easterly of the land above described, on the easterly side of said road, containing about ten acres, with a paper-mill and

water privilege, together with all the machinery used in the mill when the mill is in full operation for the purpose of making paper, and conducting the usual business of the establishment, bounded, beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill; thence eastwardly by said Merrill's land to Spicket river; thence northerly up said river ten rods; thence eastwardly across said river to a stake and stones on the easterly side of the river; thence northerly and westerly by the side of said river, including the same, to the stone bridge at said road; thence southerly by said road to the first bound. Also, a piece of land on the easterly side of said river, opposite to the dam, and extending six rods below and six rods above the dam, and four rods wide, from the river, with the privilege of passing and repassing through land formerly owned by Joseph Bodwell, from said road to the last-mentioned piece of land, by closing gates and bars. Also, the privilege of two rods wide on land late of said Joseph Bodwell, above the mouth of Bloody brook, for digging gravel. Also, the privilege of the stream, with the right of keeping the dam at its present height, together with all other rights of flowing, and other privileges of every description pertaining to the premises. The third piece of land contains about seven acres, lying southerly of the last described, bounded northerly, southerly, and westerly by land of Daniel Merrill, and eastwardly by Spiket river, with the paper-mill standing thereon, together with all the machinery in said mill used for conducting the business of making paper and conducting the usual business of the establishment; also all the right of flowing and raising a dam on the premises. Also, another piece of land containing about half an acre, lying on the easterly side of said river, opposite to the mill, bounded westerly by said river, southerly, easterly, and northerly by land of the heirs of Enoch Poor, deceased. Also, a road two rods wide, leading from said road to the last described premises, through land of said Merrill.

Your orator further shows, that being in want of money for various purposes, he from time to time raised such sums as he needed, by mortgages upon the above-described property, to a considerable amount in the whole, and on the twenty-ninth of March, eighteen hundred and forty-three, he conveyed, by a deed of that date, the said lands, subject to said mortgages, to one Jesse Sargent, of Andover, in said county of Essex. And your orator further shows, that on or about the twenty-first day of October, in the year eighteen hundred and forty-three, he became insolvent, and petitioned for the benefit of the act of the Commonwealth of Massachusetts, entitled an "Act for the relief of insolvent debtors, and for the more equal distribution of their effects." And your orator further shows, that on the first of June, after the insolvency of your orator, his assignee, Jacob Howe, of Haverhill, in the county of Essex aforesaid, by a deed of the date of June the first, in the year

eighteen hundred and forty-four, conveyed to one Joseph Foster, of Newton, in the county of Middlesex aforesaid, whatever right, title, or interest the said Durant, your orator, had on the twenty-first day of October, in the year eighteen hundred and forty-three, in and to the above-described lands; that by deed of April the seventh, in the year eighteen hundred and forty-five, the said Foster conveyed to one Robert Farley, of Boston, in the county of Suffolk aforesaid, by deed of quit-claim, all his, the said Foster's, interest in the said lands; that on the twentieth day of August, in the year eighteen hundred and forty-six, the said Farley conveyed, by deed of quit-claim, to the said Essex Company, all his, the said Farley's, interest in and right to the said lands.

And your orator further shows, that on the eleventh day of September, in the year 1843, the said Sargent conveyed to said Stephen Barker, one of the above-named defendants, all his, said Sargent's, interest in and to the said lands, which he had under your orator's said conveyance to him, said Sargent, of the twenty-ninth of March, in the year eighteen hundred and forty-three. And your orator avers, that shortly afterwards, the precise time your orator cannot now state, he had an interview with the said Barker, at which interview the said Barker stated in substance to your orator that he did not expect to redeem said lands from the mortgages to which they were subject; that he had purchased them with some expectation of making something from the rents, in which he was disappointed, and that he, said Barker, did not understand how, and had not the time, or leisure from other engagements, to manage said property, especially that he knew nothing about the management of a paper-mill—a mill of which sort was then in operation on the said lands; and thereupon it was agreed by and between your orator and the said Barker, that in consideration of your orator's undertaking to pay, or cause to be paid, to the said Barker, a sum of money sufficient to compensate him for his trouble and expenses, which then was estimated at one hundred dollars or thereabouts, he, the said Barker, would convey the said lands, and his interest therein, to your orator, or any other person or persons that your orator should direct. And it was agreed that your orator should make such bargain as he saw fit in relation to the said lands, with any person or persons, and for any such sum or sums as he, your orator, thought proper; and the said Barker agreed, that whenever called on by your orator to do so, he would convey his legal title to said lands, as your orator should direct, and that he would hold said lands in special trust for your orator's benefit, in consideration that whenever they were sold the said Barker should receive the said sum of one hundred dollars, or thereabouts, and that he, the said Barker, would not convey the said lands, or his interest in or title thereto, except as your orator should direct; and it was further understood and agreed, that all sums of money, or whatever other valuable consideration should be received for the said

lands, should be retained by your orator, for his own proper benefit, after paying the sum of one hundred dollars, or thereabouts, to the said Barker. And your orator further shows, that in compliance with this agreement and undertaking, and in consequence thereof, he proceeded to offer said lands for sale, and made various attempts to effect a sale thereof, and on several occasions, with the assistance of the said Barker; and that on or before the fifteenth of February, in the year eighteen hundred and forty-five, he did make a bargain for the sale of said property to one Larkin Thorndike, of Salem, in the county of Essex aforesaid, and thereupon called upon said Barker to make a conveyance thereof to said Thorndike, in compliance with the agreement and undertaking between your orator and said Barker, and with the obligations of the said Barker in the premises, and the said Barker, in fulfilment of his said obligations, upon said request of your orator, did make a conueyance of said lands to said Thorndike. But your orator shows unto your honors, that soon after said conveyance had been thus made by said Barker, and while it was yet in your orator's hands, and not yet delivered to said Thorndike, one the above-named defendants, Daniel Saunders, applied to said Barker for the purchase of said lands, whereupon said Barker, as your orator is informed and believes, stated to said Daniel Saunders his said agreement and obligation to your orator, and that he had conveyed away, or had parted with all his title to and interest in the said lands, and that they belonged to and were under the control of your orator; and thereupon said Daniel Saunders urged the said Barker to see your orator and negotiate with him, your orator, and try and prevail on your orator to make a sale of said lands to him, said Daniel Saunders, and others as hereinafter set forth, if the bargain with said Thorndike was not already completed, and if already completed, to procure a release therefrom, in order to such negotiation with said Saunders and his associates. And your orator avers, that said Barker did, in consequence of the wishes and request of said Daniel Saunders, come to your orator and propose a sale of said lands to said Daniel Saunders and others; and your orator finally consented and agreed to make such sale, provided the terms should be acceptable to your orator. And your orator further shows, that shortly afterwards, by procurement of the said Barker, he had an interview with the said Daniel Saunders, partly at said Barker's house, and partly at the house of your orator, and then and there made an agreement with said Daniel Saunders, which, your orator avers, was to the following effect, that is to say:

Your orator agreed to convey, by a conditional deed, to said Daniel Saunders, and said Lawrence, and Nesmith, the above mentioned lands; and said Daniel Saunders agreed to procure, to be executed and delivered to your orator, a bond signed by said Lawrence, and Nesmith, and himself, conditioned to the effect that should said last-named defendants elect to purchase said lands of

your orator, they should pay him therefor the sum of twenty-seven thousand dollars, less the amount of the several mortgages to which the said lands were subject, and which they were to discharge.

And your orator avers that, in compliance with this agreement, he did execute and deliver to the said Daniel Saunders, Lawrence, and Nesmith, a conditional deed of said lands, and the said Daniel Saunders wrote and subscribed a certain certificate or memorandum of agreement, a copy of which is hereunto annexed, and marked A, which your orator prays may make part of this bill, and delivered the same to your orator. And your orator further shows that it was agreed and understood by and between him and the said Daniel Saunders and Barker, that this above-mentioned instrument should be immediately replaced by a more formal one, but to the same effect, which was to be signed also by the other defendants, Nesmith and Lawrence, and that said last-mentioned agreement or bond, so signed, should be delivered to your orator on the following day. And your orator further shows and charges, that it was expressly agreed by and between him and the said Daniel Saunders, that none of the instruments executed and delivered at this meeting at the house of said Barker, as aforesaid, should by either party be placed on record, unless and until the said Daniel Saunders, and the said Lawrence, and Nesmith, should, within the time specified in said memorandum, elect to take your orator's property on the terms in said memorandum set forth.

And your orator now further shows unto your honors, that on the day following the said meeting at the house of the said Barker, defendant, Daniel Saunders, jr., in company with said Barker, came to the house of your orator with a draft of a bond, which was, according to agreement, to take the place of the memorandum of agreement hereunto annexed, and marked A; that said bond was not entirely satisfactory to your orator at first, but that, having been altered by said Barker, your said orator approved of it, and agreed to accept the same when it should have been signed by the said Lawrence, and Nesmith, and Daniel Saunders; that said Daniel Saunders, jr., agreed that that should be accordingly done, and the bond, so executed, delivered to your orator on the following day.

But now your orator shows that said bond never was so signed by said defendants, nor delivered to him; that neither the said twenty-seven thousand dollars, mentioned in said memorandum of agreement, and stipulated therein to be paid to him, in case said defendants elected to take said property, nor any other sum, nor any other valuable consideration whatever, hath ever been paid your orator by said defendants, or any, or either of them; that your orator was always ready to perform, in good faith, his agreements and undertaking in the premises, and fully expected and believed the said defendants would in like manner perform theirs.

And your orator further shows, that he is informed and believes,

and therefore charges it to be so, that the said Barker was employed by said Lawrence, Nesmith, and Daniel Saunders, to make bargains for and purchases of lands for them the said Lawrence, Nesmith, and Daniel Saunders, and that said last-named defendants were purchasing lands with a view of forming a company, or in expectation that a corporation would be formed for manufacturing purposes, to be established in the said town of Methuen; and that said corporation was afterwards actually formed, of which the said last-named defendants were members or stockholdrs, and the said corporation was called the Essex Company, which your orator has named a party defendant thereto; and your orator further charges, that the said Rand and Storrow were the agents of said association or corporation, and by it employed in and about the purchasing of lands in said vicinity. And your orator further shows, that the said defendants, having retained possession of your orator's deed and conveyance, and never having, any of them, executed or delivered to your orator any bond, or other instrument, according to their undertakings and agreements, in violation of their express promises and undertakings, and contrary to all equity and good conscience, placed upon the records of the Register of Deeds for the County of Essex your orator's conditional deed above referred to, and procured and induced, by some means to your orator unknown, the said Barker to execute and deliver to them, or some of them, a conveyanee of his, said Barker's, legal or nominal title to said property, which also they put upon record in the Registry of Deeds in the County of Essex aforesaid; that your orator waited until the time had expired within which their decision as to taking the property, or otherwise, was to be made, when he was informed that said defendants had elected not to take the property; that your orator was in entire ignorance of their proceedings in the premises up to this period, that is to say, that they had placed on record his conditional deed aforesaid, and had procured from said Barker a conveyance of his title as aforesaid, which also they had placed on record as aforesaid, or of their intention in the premises, until the period when he received notice that they had elected not to take the said property, when your orator became informed of their various doings and actings.

And your orator further shows, that said defendants, from the date of the first interview between your orator and the said defendants Daniel Saunders and Barker, intending to deceive and defraud your orator, notwithstanding their repeated agreements and promises that no papers on either side should be recorded until your orator had notice that they had elected to take the said property, and until the bond to take the place of the memorandum of agreement, as aforesaid, had been executed and delivered to your orator, within three days from the date of said interview, which took place, as your orator shows, on the eighteenth day of March, in the year eighteen hundred and forty-five, procured your orator's

conditional deed, to be recorded in the Registry of Deeds of the County of Essex aforesaid; that on the very next day, that is, on the nineteenth of March, in the year eighteen hundred and forty-five, they procured and induced said Barker, upon the representation that they had or should complete their arrangement with your orator in good faith, to make to them a conveyance of his said title, which they also procured, to be recorded at the same time with your orator's conditioned deed.

And your orator further shows, that on the first day of April, in the year eighteen hundred and forty-five, on which day, according to the memorandum of agreement hereto annexed as aforesaid, the defendants, Lawrence, Nesmith, and Daniel Saunders, were to elect whether or not to take said lands of your orator, and on which day they gave notice to your orator, that they had elected not to take said lands and property, they, said Lawrence, Nesmith, and Daniel Saunders, made and delivered a deed of said property to Edward S. Rand and Charles S. Storrow, trustees of the said Essex Company, without any notice to your orator. And your orator further shows unto your honors, that when, after the said first day of April, he discovered that said Lawrence, Nesmith, and Saunders had procured his conditional deed to be registered as aforesaid, and had also obtained, as aforesaid, a deed from the said Barker of said lands, he immediately called on said Barker, and in company with him proceeded to Lowell, in order to see the said Lawrence, Nesmith, and Daniel Saunders; and that he did so see said last-named defendants, and had an interview or interviews with them, and did complain to them of what they had done in the premises; that said Nesmith and Saunders gave your orator no satisfaction; and though they could not and did not deny your orator's rights, they manifested a resolution to disregard them, and retain said lands, by virtue of the deeds so fraudulently obtained, as is hereinbefore set forth. And your orator further shews, that he saw the said Lawrence, and complained to him of his and the said Nesmith's and Saunders' doings in the premises, as are hereinbefore set forth; and the said Lawrence expressed regret thereat, and promised your orator that it should be set right, and that the deeds should be given up, or the said lands re-conveyed to your orator, and did not at any time undertake to deny your orator's rights in the premises, or his ownership of said lands, but, on the contrary, admitted the same.

And your orator avers that he made, or caused to be made, three several propositions to the said defendants, in regard to said lands, and the adjustment of his rights thereto, and that he was given to understand, and induced to believe, by said Lawrence, that a just and equitable arrangement would be made with him, and one or the other of said propositions accepted, and that trusting to the representations and promises and honor of said Lawrence, and knowing his influence with the other defendants, your orator believed that a

just arrangement and settlement would be made with him, and was consequently induced to lend his assistance to said Lawrence, Nesmith, and Saunders, and to said Rand and Storrow, in completing certain arrangements in regard to said lands, which it was the interest of said defendants to have made, for your orator shows unto your honors, that confiding in the promises of said Lawrence as aforesaid, it was arranged and agreed between them, for the purpose of consolidating the title to said lands, for the convenience of all parties, that the said Lawrence, Nesmith, and Daniel Saunders, with the assistance and co-operation of your orator, should proceed to procure assignments from the various persons holding mortgages on the said lands, to be made to the said Lawrence, Nesmith, and Daniel Saunders, and the said Rand and Storrow, and that, when the title that should have been thus consolidated, the said defendants would make an arrangement with your orator, by which all his equitable rights in the premises should be fully saved to him; that in pursuance of this engagement and arrangement your orator proceeded to obtain assignments of the mortgages on your orator's property, to be made to them, the said defendants, and for this purpose made several journeys to visit various of the mortgagees, whose mortgages were not then due, with whom, said mortgagees, your orator was supposed to have some particular influence, and endeavored to prevail on such mortgagees to assign their mortgages as aforesaid to said defendants, knowing, as your orator avers and charges to be true, that without said assistance of your orator, they could not procure from various of the mortgagees such assignment. And your orator avers further, that he did visit such mortgagees, one of whom was the sister of your orator, and did prevail on them to assign their said mortgages, and without his, your orator's, exertions and influence, this could not have been effected; and that it was done by various of the mortgagees as a personal favor to himself, who urged and obtained it on that ground, your orator supposing all the while that said defendants were acting towards him in good faith.

And your orator further shows, that after the conveyance by the said defendants, Lawrence, Nesmith, and Daniel Saunders, as hereinafter set forth, to said Rand and Storrow, trustees of said Essex Company, and agents of said company, your orator made several of the said journeys, and procured the said Abigail Durant, his sister aforesaid, to make an assignment of her mortgage on your orator's lands to said Rand and Storrow, trustees of the said Essex Company, and also the Mercantile bank of Salem, aforesaid, and John Tenney, of said Methuen, to assign their mortgages to said company; and that he did so with the knowledge of said trustees, they having, as he avers, at the time they received the conveyance of said lands from said Daniel Saunders, Lawrence, and Nesmith, full knowledge of his, your orator's, interest in said lands, of his bargain and agreement with said Lawrence, Nesmith, and Daniel

Saunders, and of the reasons which induced your orator to exert himself to procure said assignments, as well as other assignments of various mortgages on his said lands, to be made to said trustees.

And your orator further shows, that after he had procured the assignment of the mortgages, as aforesaid, to be made to said defendants, he had several interviews with said Lawrence, Storrow, and Saunders, all being together, and endeavored to prevail on them to comply with their engagements and promises and obligations, and to do what equity required of them towards your orator in regard to his said lands, and to endeavor to induce them to reconvey said lands to your orator, or to pay him therefor, but was wholly unable to prevail on them, or either of them, so to do; and thus they wholly refused to accept any of your orator's propositions for a settlement and adjustment, or to do anything in the premises towards satisfying your orator respecting his rights.

And your orator further shows, that said Rand and Storrow, pretending to claim under the title thus acquired and derived from said Lawrence, Nesmith, and Daniel Saunders, did, on the seventh day of June, in the year eighteen hundred and forty-five, make, execute, and deliver a deed of said property and lands to the Essex Company, aforesaid. And your orator further avers, that said Essex Company, when they received said conveyance from said trustees, had full knowledge of all the previous transactions between your orator and the above named defendants, and were informed and had notice of your orator's interest in and claim to said lands.

And your orator further shows, that claiming, as your orator charges, to hold said property and lands by said conveyance of said Rand and Storrow, and by the conveyance to said company of said Robert Farley of his interest in said lands, derived by deed, as aforesaid, from said Foster, to whom your orator's assignee, Jacob Howe, aforesaid, conveyed by deed, as hereinbefore mentioned, whatever interest your orator had in the lands aforesaid, on the twenty-first day of October, eighteen hundred and forty-three, and which your orator denies to have been any interest whatever, because your orator avers, that before that time he had conveyed all his interest in said lands to Jesse Sargent, aforesaid, who also, before that time, had conveyed his interest to said Barker, said Essex Company refused to relinquish said lands to your orator, or to reconvey them to him, though your orator has offered to refund to them the amount paid by them to redeem any lawful incumbrances on said lands, and to do whatever else equity and good conscience might require of him in the premises, and always has been, and still is, ready so to do; and said company, further to injure and oppress your orator, did, on the sixteenth day of June, in the year eighteen hundred and forty-seven, sue out of the clerk's office of the Supreme Judicial Court of the County of Essex a writ of ejectment against your orator, for the purpose of taking the possession, from your orator, of a portion of said lands, which said

writ is returnable before the said Supreme Judicial Court next to be holden at Salem, within and for said county of Essex, on the second Tuesday of November next.

To the end, therefore, that said defendants may, if they can, show cause why your orator should not have the relief hereby prayed for, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter named and set forth, as by the note hereinunder written they are respectively required to answer, that is to say:—

1st. Whether your orator was the owner and in possession of certain tracts or parcels of land, with the buildings and improvements thereon, situate in the town of Methuen, now the town of Lawrence, in the county of Essex, and State of Massachusetts, bounded and described as hereinbefore set forth?

2d. Whether your orator mortgaged said above described property to various persons, and for various sums, to a considerable amount in the whole?

3d. Whether your orator, on the twenty-ninth day of March, eighteen hundred and forty-three, by his deed of that date, conveyed the said lands, subject to the said mortgages, to the said Sargent? And whether the said Sargent, on the eleventh day of September, eighteen hundred and forty-three, conveyed the same, by his deed of that date, to the said Stephen Barker?

4th. Whether it was agreed between your orator and said Barker, subsequently to said Barker's purchase of said lands, that in consideration of your orator's promise to pay said Barker one hundred dollars, or any other sum, he, the said Barker, would hold the said lands for your orator's benefit, and that your orator might sell and dispose of the same to any person or persons, and for any consideration which your orator should elect; and that, upon such sale or disposition by your orator, the said Barker would, upon request, convey the same to such person or persons as your orator should direct, and that your orator should have the proceeds of any such sale; and whether said Barker agreed that he would not convey said lands, except by your orator's directions?

5th. Whether, in pursuance of said agreement, your orator proceeded to offer said lands for sale, and, with the assistance of the said Barker, made attempts to effect the sale thereof? And whether, on or about the fifteenth day of February, in the year eighteen hundred and forty-five, your orator did make a bargain for the sale of the said lands to Larkin Throndike, esquire, of Salem, aforesaid; and whether the said Barker, at the request of your orator, and in pursuance of his said agreement with your orator, did execute a conveyance of said lands to the said Throndike?

6th. Whether, soon after the execution of said conveyance by

said Barker to said Thorndike, the said Daniel Saunders applied to the said Barker for the purchse of said lands of him, and whether the said Barker then informed said Saunders of his agreement with, and obligation to, your orator in regard to said lands, and that he had, in compliance with his said agreement and obligation, executed a deed of the same; and whether, thereupon, the said Saunders urged the said Barker to negotiate with your orator, and induce him to sell the said lands to the said Saunders and his associates, if he had not already sold them to the said Thorndike, and if he had so sold them, to endeavor to procure a recision of the bargain, in order that he might sell them to said Saunders and his associates; and whether, in pursuance of the said Saunders' request, the said Barker did make such application to your orator; and whether, thereupon, your orator did agree to negotiate with the said Saunders and his associates for the sale of said lands?

7th. Whether your orator, in consequence of his said interview with said Barker, did meet the negotiate with said Saunders at the houses of said Barker and your orator for the sale of said lands, and whether it was then and there agreed that your orator should, convey, by a conditional deed, to said Saunders, and said Lawrence, and Nesmith, the said lands; and whether it was further agreed by said Saunders that he would procure a bond to be executed by himself, and said Lawrence, and Nesmith, to your orator, conditioned to the effect, that should they elect to take said lands according to the terms of said conditional deed, they would pay your orator therefor the sum of twenty-seven thousand dollars, less the amount of the several mortgages to which the said lands were subject; and whether, in pursuance of said agreement, your orator did execute and deliver a conditional deed of said lands; and whether the said Saunders wrote, and subscribed, and delivered to your orator a memorandum of agreement, a copy of which is hereunto annexed, marked A?

8th. Whether it was agreed between your orator and the said Saunders that the said memorandum of agreement should be, on the next day, replaced by a more formal instrument, containing the same provisions, and executed by said Lawrence, Nesmith, and Saunders?

9th. Whether it was agreed between your orator and the said Saunders that none of the instruments executed and delivered at the meeting at said Barker's and your orator's houses should be put on record by either party, before the said Lawrence, Nesmith, and Saunders should elect to take said lands on the terms set forth in said memorandum of agreement?

10th. Whether, on the day following said meeting at said Barker's house, the said Barker and said Daniel Saunders, jr., went to the house of your orator with a draft of a bond, which they proposed to your orator, and which, after some alteration, he accepted, to take the place of the said memorandum of agreement, according

writ is returnable before the said Supreme Judicial Court next to be holden at Salem, within and for said county of Essex, on the second Tuesday of November next.

To the end, therefore, that said defendants may, if they can, show cause why your orator should not have the relief hereby prayed for, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter named and set forth, as by the note hereinunder written they are respectively required to answer, that is to say:—

1st. Whether your orator was the owner and in possession of certain tracts or parcels of land, with the buildings and improvements thereon, situate in the town of Methuen, now the town of Lawrence, in the county of Essex, and State of Massachusetts, bounded and described as hereinbefore set forth?

2d. Whether your orator mortgaged said above described property to various persons, and for various sums, to a considerable amount in the whole?

3d. Whether your orator, on the twenty-ninth day of March, eighteen hundred and forty-three, by his deed of that date, conveyed the said lands, subject to the said mortgages, to the said Sargent? And whether the said Sargent, on the eleventh day of September, eighteen hundred and forty-three, conveyed the same, by his deed of that date, to the said Stephen Barker?

4th. Whether it was agreed between your orator and said Barker, subsequently to said Barker's purchase of said lands, that in consideration of your orator's promise to pay said Barker one hundred dollars, or any other sum, he, the said Barker, would hold the said lands for your orator's benefit, and that your orator might sell and dispose of the same to any person or persons, and for any consideration which your orator should elect; and that, upon such sale or disposition by your orator, the said Barker would, upon request, convey the same to such person or persons as your orator should direct, and that your orator should have the proceeds of any such sale; and whether said Barker agreed that he would not convey said lands, except by your orator's directions?

5th. Whether, in pursuance of said agreement, your orator proceeded to offer said lands for sale, and, with the assistance of the said Barker, made attempts to effect the sale thereof? And whether, on or about the fifteenth day of February, in the year eighteen hundred and forty-five, your orator did make a bargain for the sale of the said lands to Larkin Throndike, esquire, of Salem, aforesaid; and whether the said Barker, at the request of your orator, and in pursuance of his said agreement with your orator, did execute a conveyance of said lands to the said Throndike?

6th. Whether, soon after the execution of said conveyance by

said Barker to said Thorndike, the said Daniel Saunders applied to the said Barker for the purchse of said lands of him, and whether the said Barker then informed said Saunders of his agreement with, and obligation to, your orator in regard to said lands, and that he had, in compliance with his said agreement and obligation, executed a deed of the same; and whether, thereupon, the said Saunders urged the said Barker to negotiate with your orator, and induce him to sell the said lands to the said Saunders and his associates, if he had not already sold them to the said Thorndike, and if he had so sold them, to endeavor to procure a recision of the bargain, in order that he might sell them to said Saunders and his associates; and whether, in pursuance of the said Saunders' request, the said Barker did make such application to your orator; and whether, thereupon, your orator did agree to negotiate with the said Saunders and his associates for the sale of said lands?

7th. Whether your orator, in consequence of his said interview with said Barker, did meet the negotiate with said Saunders at the houses of said Barker and your orator for the sale of said lands, and whether it was then and there agreed that your orator should, convey, by a conditional deed, to said Saunders, and said Lawrence, and Nesmith, the said lands; and whether it was further agreed by said Saunders that he would procure a bond to be executed by himself, and said Lawrence, and Nesmith, to your orator, conditioned to the effect, that should they elect to take said lands according to the terms of said conditional deed, they would pay your orator therefor the sum of twenty-seven thousand dollars, less the amount of the several mortgages to which the said lands were subject; and whether, in pursuance of said agreement, your orator did execute and deliver a conditional deed of said lands; and whether the said Saunders wrote, and subscribed, and delivered to your orator a memorandum of agreement, a copy of which is hereunto annexed, marked A?

8th. Whether it was agreed between your orator and the said Saunders that the said memorandum of agreement should be, on the next day, replaced by a more formal instrument, containing the same provisions, and executed by said Lawrence, Nesmith, and Saunders?

9th. Whether it was agreed between your orator and the said Saunders that none of the instruments executed and delivered at the meeting at said Barker's and your orator's houses should be put on record by either party, before the said Lawrence, Nesmith, and Saunders should elect to take said lands on the terms set forth in said memorandum of agreement?

10th. Whether, on the day following said meeting at said Barker's house, the said Barker and said Daniel Saunders, jr., went to the house of your orator with a draft of a bond, which they proposed to your orator, and which, after some alteration, he accepted, to take the place of the said memorandum of agreement, according

to the said Daniel Saunders' stipulations with your orator; and whether the said Daniel Saunders, jr., did then and there agree that a bond, in conformity with said draft, should be executed and delivered by the said Lawrence, Nesmith, and Daniel Saunders, to your orator, on the following day?

11th. Whether said bond was ever executed by the said Saunders, Nesmith, and Lawrence, and delivered to your orator?

12th. Whether the sum of twenty-seven thousand dollars, mentioned in said memorandum of agreement, and stipulated therein to be paid to your orator in case said Lawrence, Nesmith, and Daniel Saunders elected to take said lands, or any other sum, or valuable consideration whatever, has been paid to your orator by the said Lawrence, Nesmith, or Saunders, or either of the said defendants?

13th. Whether the said Barker was employed by the said Lawrence, Nesmith, and Daniel Saunders, to make bargains for, or purchases of lands for them; and whether they were procuring titles to lands with a view of forming a corporation, or with the expectation that a corporation would be formed for manufacturing purposes, to be located in said town of Methuen; and whether such corporation ever was formed, and called the Essex Company; and whether the said Lawrence, Nesmith, and Daniel Saunders were members or stockholders of said company?

14th. Whether the said Rand and Storrow were agents of said company, or of persons now belonging to it, and employed by it or them, to take and hold lands for it or them; and whether the said Rand and Storrow were acting as such agents when they received the conveyance of your orator's said lands from said Lawrence, Nesmith, and Daniel Saunders?

15th. Whether the said defendants, or any or either of them, procured to be recorded in the Registry of Deeds for the county of Essex, the aforesaid conditional deed, executed by your orator to the said Lawrence, Nesmith, and Daniel Saunders; and whether they, or any of them, informed yonr orator that such conveyance had been recorded as aforesaid?

16th. Whether the said defendants, or either of them, procured, or induced, by any and what means, the said Barker to execute and deliver to said Lawrence, Nesmith, and Saunders, a conveyance of the said lands; and whether they caused the same to be recorded in the said Registry of Deeds?

17th. Whether the said defendants, or either of them, procured or induced, by any and what means, the said Barker to execute and deliver to said Lawrence, Nesmith, and Saunders, a conveyance of said lands; and whether they caused the same to be recorded in the said Registry of Deeds?

18th. Whether the said defendants, or either of them, ever informed your orator that they had elected not to take said lands, in

pursuance of the terms in said memorandum of agreement set forth, and when they so informed your orator; and whether such notice was given to him before the time limited by said memorandum of agreement for such notice?

19th. Whether the said interview between your orator and the said Daniel Saunders, at said Barker's house, took place on the eighteenth day of March, in the year eighteen hundred and forty-five; and whether the said defendants, or either and which of them, procured your orator's said conditional deed to be recorded, as aforesaid, within three days thereafter?

20th. Whether the said defendants, or either of them, and which of them, procured from said Barker a conveyance of the said lands on the nineteenth day of March, in the year eighteen hundred and forty-five; and whether the said conveyance was put upon record, as aforesaid, at the same time with your orator's said conditional deed, and what representations or statements were made by them to said Barker in order to procure said conveyance?

21st. Whether the said Lawrence, Nesmith, and Daniel Saunders, on the first day of April, in the year eighteen hundred and forty-five, executed a conveyance of said lands to said Rand and Storrow, trustees of said Essex Company; and whether any notice of said conveyance was given to your orator?

22d. Whether, shortly after said first day of April, said Barker and your orator called on the said Lawrence, Nesmith, and Daniel Saunders, at Lowell aforesaid, and complained to them of what they had done in the premises?

23d. Whether, at said interview at said Lowell, the said Lawrence expressed to your orator regret at what had been done; and whether he promised your orator that the thing should be set right, that the deed should be given up, or cancelled, or the lands reconveyed to your orator; and whether said Lawrence did not then admit your orator's rights in the premises, and acknowledge his equitable ownership of said lands?

24th. Whether an arrangement or agreement was made between your orator and the defendants, or either of them, that the said defendants, or either of them, should proceed, with your orator's assistance, to procure assignments from the various mortgagees of their respective mortgages, to be made to the said defendants, or any of them; and whether the said defendants, or any of them, agreed with your orator, that, after such assignments should be so obtained, such an arrangement should be made with your orator as would preserve all his equitable rights in the premises; and whether, in pursuance and consequence of said agreement, your orator did lend his assistance in procuring said assignments, to be made as aforesaid; and whether some of the said assignments were not procured by the agency of your orator, when they could not otherwise have been procured?

25th. Whether, after said assignments of said mortgages had

been obtained by your orator, he had several interviews with said defendants, Lawrence, Saunders, and Storrow, in company with each other, or either and which of them, and endeavored to prevail on them to convey to him his said lands, or pay him therefor, and made propositions to them for the settlement and adjustment, according to equity, of his claims; and whether they refused to make any settlement with your orator, and what took place at said interviews, or either of them?

26th. Whether the said Rand and Storrow did, on the seventh day of June, in the year eighteen hundred and forty-five, convey said lands to said Essex Company; and whether the said Rand and Storrow, and the said Essex Company, then had notice or knowledge of your orator's claims to said lands?

27th. Whether said Essex Company did, on the sixteenth day of June, in the year eighteen hundred and forty-five, sue, out of the clerk's office of the Supreme Judicial Court of the county of Essex, a writ of ejectment against your orator for the purpose of taking the possession of said lands, or a part of them, from your orator, which writ is returnable before the said Supreme Judicial Court next to be holden at Salem, in the said county of Essex, on the second Tuesday of November next?

And your orator prays this honorable Court to issue writs of subpœna, in due form of law, and according to the rules and practice of this Court, to be directed to Samuel Lawrence and John Nesmith, of Lowell, in the county of Middlesex; Daniel Saunders and Charles S. Storrow, of Lawrence, in the county of Essex; Stephen Barker, of Methuen, in said county of Essex; Daniel Saunders, jr., of Andover, in said county of Essex; Edward S. Rand, of Boston, in the county of Suffolk; and the Essex Company, a corporation duly established by the authority of the State of Massachusetts—all of said State of Massachusetts—commanding them, on a certain day, and under a certain penalty therein to be inserted, personally to be and appear before this honorable Court, then and there to answer all and singular the premises, and to stand to and abide and perform such order and decree therein as to this Court shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator prays, that his said conditional deed of his said lands to said Lawrence, Nesmith, and Daniel Saunders; and the deed of said Barker to said Lawrence, Nesmith, and Daniel Saunders, of said lands; and the deed of said Lawrence, Nesmith, and Daniel Saunders, of said lands to said Rand and Storrow, trustees as aforesaid; and the deed of said Rand and Storrow, trustees as aforesaid, to said Essex Company, of said lands of your orator—may be declared and decreed to be void and inoperative to divest your orator of any title to or property in said lands; and that said Essex Company may be decreed to convey to your orator the said

tracts or parcels of land, with the buildings and improvements thereon, on payment to them, by your orator, of such sum as in equity and good conscience your orator ought to pay for the reimbursement to them of moneys expended by them in procuring assignments of the said several mortgages.

And your orator also prays that the said Essex Company may be enjoined from further prosecuting their said action of ejectment against your orator during the pendency of the proceedings under this bill; and also that your orator may have such other and further relief as the nature of the case may require, and to this honorable Court shall seem meet, and as shall be agreeable to equity and good conscience.

ADOLPHUS DURANT.

FLETCHER WEBSTER,
J. P. HEALY,
For Complainant.

CT. CT. U. S., *Mass. District, ss:*

Oct. 11, 1847.

In Vacation.

Then personally appeared said Durant, and made solemn oath that the statements made in the foregoing bill by him signed, as of his own knowledge, are true; those made upon the information of others, he believes to be true.

Before me,
JAS. B. ROBB,
Clerk.

N. B.—The defendant, Stephen Barker, is required to answer all the interrogatories, except only the 27th.

The defendants, Samuel Lawrence and Daniel Saunders, are required to answer the interrogatories from No. 1 to 3, inclusive, and from No. 6 to 25, inclusive.

The defendant, John Nesmith, is required to answer the interrogatories from No. 1 to 3, inclusive, and from No. 6 to 24, inclusive.

The defendant, Daniel Saunders, jr., is required to answer the interrogatories numbered 10 and 11.

The defendant, Charles S. Storrow, is required to answer the interrogatories from No. 1 to 3, inclusive, and from No. 12 to 17, inclusive; and also the interrogatories numbered 19, 21, 24, 25, and 26.

The defendant, Edward S. Rand, is required to answer the interrogatories from No. 1 to 3, inclusive, and from No. 12 to 17,

inclusive; and also the interrogatories numbered 19, 21, 24, and 26.

The defendant, the Essex Company, is required to answer the interrogatories from No. 1 to 8, inclusive, and from No. 12 to 17, inclusive; and also the interrogatories numbered 19, 21, 24, 25, 26, and 27.

A.

(Copy.)

Methuen, March 18, 1845.

This certifies, that whereas I have this day negotiated with Adolphus Durant for the purchase of his estate in Methuen, in behalf of Samuel Lawrence, John Nesmith, and myself, and the said Durant has executed a deed of the same, wherein the consideration named is five hundred dollars: Now, therefore, it is hereby declared that the contract and negotiation is made on the following terms, viz:

If the said grantees shall elect to take the estate named in said deed, they are to pay the said Durant the sum of twenty-seven thousand dollars for the same, deducting therefrom all the sums which are necessary to be paid to settle the mortgages and other incumbrances now on the estate conveyed by said deed.

(Signed) DANIEL SAUNDERS.

It is further agreed and made a condition of the above-mentioned negotiation, that said grantees shall make known to said Durant their determination whether they conclude to take the premises or not on or before the first day of April next.

(Signed) DANIEL SAUNDERS.

And thereafter, to wit, on the 17th day of March, A. D. 1848, the answers of the Essex Co., of Daniel Saunders, of Edward S. Rand, of Charles S. Storrow, and of Stephen Barker, were severally filed in the clerk's office, and are in the words following, to wit:

CIRCUIT COURT U. S.,
Massachusetts District.

ADOLPHUS DURANT }
vs. }
SAMUEL LAWRENCE et al. }

The answer of the Essex Company to the bill of complaint of Adolphus Durant.

These respondents, saving to themselves all benefit of exception to the said bill of complaint, for answer thereunto, or unto so much

or such parts thereof as they are advised it is necessary or material for them to answer unto, answering, say:

They have been informed, and believe it to be true, that the said complainant was formerly the owner of the lands in the said bill mentioned, with their appurtenances; and while so the owner he mortgaged the same at different times to sundry persons to secure the payment of divers sums of money, and these respondents crave leave to refer to the mortgage deeds and assignments thereof, or to duly attested copies of the records thereof, when produced as part of this answer.

And these respondents have been further informed and believe, that on or about the twenty-ninth day of March, eighteen hundred and forty-three, the said Durant executed a deed which purported to convey the said lands, in fee, to one Jesse Sargent; and that the said Sargent did afterwards execute a certain deed which purported to convey the said lands to the said Barker, in fee-simple.

And on the twentieth day of October, eighteen hundred and forty-three, the said Durant, on his own petition, was decreed an insolvent, under the law of the State of Massachusetts, commonly called the insolvent law; and one Jacob Howe, having been duly appointed his assignee, did sell, and by his deed, bearing date the first day of June, in the year eighteen hundred and forty-four, did undertake to convey, in fee-simple, to one Joseph Foster the same equity of redemption of all the right, title, and interest of the said Durant in the said premises.

And these respondents, further answering, say, that, as they are informed and believe, by a deed bearing date the nineteenth day of March, in the year eighteen hundred and forty-five, and duly acknowledged and recorded, the said Barker conveyed unto the said Lawrence, Saunders, and Nesmith, in fee-simple, all his right, title, and interest in the said premises, conditioned to be void if the said grantees, or their assigns, should not, within forty-three days from the date thereof, pay to the said Barker, or his assigns, the sum of one hundred and twenty-five dollars; and they are further informed and believe, and therefore aver, that the said condition, having been complied with, the said Barker did thereupon, by a deed bearing date the twenty-sixth day of March, in the year eighteen hundred and forty-five, duly acknowledged and recorded, convey to the said Lawrence, Saunders, and Nesmith, in fee-simple absolute, all his right, title, and interest in and to the said premises.

And these respondents, further answering, say, that by a deed bearing date on the first day of April, in the year eighteen hundred and forty-five, and duly acknowledged and recorded, the said Lawrence, Saunders, and Nesmith did convey unto Charles S. Storrow and Edward S. Rand, in fee-simple, upon the trust to convey the same unto these respondents, the said lands in the said bill mentioned, together with other lands, for the valuable consideration of seventeen thousand nine hundred and ninty-two dollars and eighty-

one cents, mentioned in the said deed, and for other valuable considerations to the said grantors paid.

And these respondents, further answering, say, that neither at the time of the said conveyance to the said Storrow and Rand, nor at the time of the payment of all or any part of the said consideration therefor to the said Lawrence, Saunders, and Nesmith, had these respondents, or, to the best of their knowledge and belief, had the said Sorrow or the said Rand, any notice that the said Barker at any time held the said premises upon any trust for the said Durant, or that the said Durant had any title whatsoever thereto, or that any fraud, deception, or undue influence, or trick of any kind, had been practised or attempted by any one, upon the said Durant or the said Barker; or that any contract, agreement, or indenture, in any way touching the said premises, with them or either of them, had been violated or not conformed unto.

And these respondents, further answering, say, that they have been informed and believe, and therefore state, that sometime after the making of the said conveyance by the said Lawrence, Saunders, and Nesmith to the said Storrow and Rand, in trust, as aforesaid, but the precise time these respondents cannot state, the said Storrow was informed, though he cannot now remember by whom, that the state of the mortgages on the said premises was such as to require immediate action; and that the said Durant had got into some difficulty with his creditors in some way connected with this property, and that he wanted his mortgages paid off, or to have the title replaced as it was before he had negotiated with Lawrence, Saunders, and Nesmith; but these respondents knew nothing of what deeds or bonds had been given, or what contracts had been made by or with the said Durant, or what claims, real or pretended, he had or made to the said premises; but very soon afterwards—though the precise time the said Storrow does not remember, he only knows it was before any of the mortgages upon the said premises had been purchased—the said Storrow, as these respondents are informed, saw the said Durant, who informed him that he had been in Lowell and seen Mr. Lawrence, meaning, as the said Storrow understood, the said Samuel Lawrence, and had concluded with him to leave everything in the hands of these respondents, and that he would assist these respondents in obtaining the assignment of the mortgages upon the said premises, and clearing off all the incumbrances thereon, so as to make the title of these respondents perfect, and that these respondents should furnish all the money required; and when these respondents had got through and had obtained a perfect title, if they obtained it at a very low rate, they must do what was right and fair by him, and that it was to be left to these respondents to decide what they would so do for him.

And these respondents are further informed, and believe, and therefore state, that the said Storrow did not know what, if any, equitable claims the said Durant had; nor did the said Storrow

understand that the said Lawrence had any power to bind these respondents to any arrangement whatever. And these respondents further aver, that the said Lawrence had not any power to bind these respondents to any arrangement whatever; but inasmuch as the said Storrow had great confidence that whatever arrangement the said Lawrence had made was just and proper, and inasmuch as the arrangement as stated by the said Durant seemed to the said Storrow to be unexceptionable, as it was expressly declared that it was to be left to these respondents themselves to decide what, if anything, was to be allowed to the said Durant, the said Storrow, in behalf of these respondents, assented thereto, and afterwards assignments of sundry mortgages were obtained form the holders thereof unto these respondents.

And these respondents, further answering, say, that as they are informed and believe, the said Storrow, in taking the said assignments, and in paying the considerations therefor, which in all cases were the full amounts secured by the said mortgages, acted upon the understanding and belief that he was proceeding to carry into effect what had previously been proposed, as aforesaid, by the said Durant, and assented to by the said Storrow; and he was confirmed in this belief by the fact that the said Durant did give some personal assistance and aid to procure some of the said assignments to be made, and seemed to the said Storrow to be thus acting in conformity with his proposal aforesaid.

And these respondents, further answering, say, that since the conveyance of the said premises to the said Storrow and Rand, in behalf of these respondents, the value of the said premises has been very greatly enhanced by reason of the expenditure by these respondents of great sums of money in the vicinity thereof, and the creation, by these respondents, and by persons claiming under them, of a great amount of water-power and the erection of mills, machine-shops, and other structures, and the collection of a large population in that vicinity.

And these respondents, further answering, say, that after the said assignments had been obtained, and while the said Storrow and the said Rand were endeavoring to obtain assignments of the remainder of the said mortgages, the said Storrow was informed that one Robert Farley had obtained the title to the remainder of the said mortgages, and especially to a certain mortgage made by the said Durant, under which possession, to make a foreclosure, was taken on the sixth day of July, in the year eighteen hundred and forty-two, and the right of redeeming which last-mentioned mortgage would of course expire on the sixth day of July, in the year eighteen hundred and forty-five.

And these respondents are further informed and believe, and therefore say, that the said Storrow was informed that the title to the right of redeeming the said premises which had been conveyed, or attempted to be conveyed, by the said Howe, as the assignee in

insolvency of the said Durant, to the said Joseph Foster, had also come to the said Farley, and that he claimed to be the lawful owner of the right of redeeming the said premises from all the mortgages thereon, and denied that the title of these respondents, to whom the said Storrow and the said Rand had then conveyed, was valid, upon the ground that the said deed from the said Durant to the said Sargent was void under the insolvent laws of Massachusetts, and that the said Barker knew that the same was void when the said Sargent conveyed to him as aforesaid.

And these respondents, further answering, say, that in order to effect the redemption of the mortgages held by the said Farley, as aforesaid, and one of which would otherwise be very soon foreclosed, these respondents did file two bills in equity in the Supreme Judicial Court of the State of Massachusetts, wherein the said Farley and Foster were made defendants, praying to redeem the mortgages held by the said Farley, as aforesaid; and unto the said bills the said Farley and Foster did answer, and among other things did aver, that the said deed from the said Durant to the said Sargent was made with intent to defeat and defraud the creditors of the said Durant, and that for that and other causes the same was void as against the said Howe as his assignee, and that the said Howe had lawfully sold and conveyed the said equity of redemption unto the said Foster, and the said Foster had lawfully sold and conveyed the same to the said Farley.

And the said Farley and Foster did further aver, that the said Durant made application to the master in chancery, before whom his proceedings in insolvency were pending, for a discharge; that the said Foster opposed his said application and showed for cause that the said Durant had concealed property with intent to defraud his creditors; that the master refused to grant the discharge; that the said Durant appealed from the said decision of the master to the Supreme Judicial Court aforesaid; that in this last-mentioned court, the appeal being heard, the only cause shown by the said Foster for affirming the said decision of the master was, that the said deed from the said Durant to the said Sargent was fraudulent as against his creditors, and that for this cause, upon the said hearing, the said decision of the master was affirmed. And so the said Farley claimed to be the sole owner of the said right of redemption, and denied the title of these respondents thereto.

And these respondents, further answering, say, that the said Storrow, in their behalf, consulted the learned counsel employed by the respondents to prosecute the said suit against the said Farley, respecting the probabilities of the said Farley's succeeding in establishing his aforesaid title, and whether or no it was expedient and proper for these respondents to purchase his said title; and being strongly advised so to do, the said Storrow, in behalf of these respondents, did purchase the aforesaid title of the said Farley, and

did pay him therefor the sum of
and the said title was conveyed to these respondents.

And these respondents, further answering, say, that as they are informed and believe, the said Durant was informed of the institution and prosecution of the said suit against the said Farley and Foster, and knew that in the said suit these respondents claimed to be the owners of the said equity of redemption under and by virtue of the said deeds from the said Durant to Sargent, and from Sargent to Barker, and from Barker to Lawrence, Saunders, and Nesmith, and from these last to Storrow and Rand, and from these last to these respondents, yet the said Durant not only was silent as to any defect in the said title of these responpents and as to any fraud committed or attempted towards him, and as to any trust in his favor touching the said premises; but, as these respondents have been informed, and believe to be true, he offered himself as a witness to support the title of these respondents, and being questioned by B. R. Curtis, esquire, the counsel of these respondents in the said suit, as to his interest, in order to ascertain whether he was competent in point of law to testify in the said cause, he declared, in substance, that he had no claim to the said property; that he had no contract with any one which would give him a right to anything, however the said suit might be terminated; and that, although he expected to receive something from these respondents, if they obtained a clear title to the said premises, this expectation was not founded on any contract, and that he relied entirely on the generosity of the said Lawrence.

And these respondents further declare, that throughout all the proceedings aforesaid they acted in the belief and in the faith that the said Durant neither had, nor pretended to have, any right, title, or interest in the said premises, and that it was entirely in the discretion of these respondents, what, if anything, they would give to the said Durant, after their title should be found complete and perfect.

And these respondents, further answering, say, that after they had acquired the title of the said Farley, as aforesaid, and after all incumbrances and expenses had been paid, the said Storrow, in behalf of these respondents, being desirous to do in good faith all that the said Durant could reasonably expect from these respondents, made a computation, astertained what sum of money the said premises had cost these respondents, and found it was upwards of twenty-six thousand dollars; and inasmuch as the sum of twenty-seven thousand dollars was the highest sum which the said Storrow had ever heard the said Durant mention as the value of the said premises, the said Storrow, in behalf of these respondents, did offer to give to the said Durant the sum of one thousand dollars; and this offer being rejected by the said Durant, the said Storrow, in behalf of these respondents, and having had conference with the said Lawrence upon the subject, did thereupon offer to give to the said Durant the sum of seven thousand dollars, provided that the wife

of the said Durant would release her possibilty of dower in the said premises, which offer the said Durant rejected; and these respondents say, that the said Storrow made the offer last aforesaid in their behalf, solely on account of the expectations which the said Durant had had and expressed, as aforesaid, that he should receive something from these respondents when the title to the premises was clear, and for the purpose of offering to do as much as any one could expect to be done, and with the hope that the said Durant would be entirely content and satisfied, and as a liberal exercise of the discretion of these respondents, upon which alone the said Durant had relied as above stated, and not because these respondents believed that the said Durant had any claim whatever which could be recognized by any court, either upon the said premises or upon these respondents. And these respondents further say, that neither then, nor at any other time, had they authorized the said Storrow to treat and settle with the said Durant, except upon the basis of a free gift, at the discretion of these respondents.

And these respondents, further answering to the specific interrogatories to them proposed, and say that—

To the first, second, and third interrogatories they have already answered.

To the twelfth interrogatory they answer, that they believe that the said Lawrence, Saunders, and Nesmith did not pay to the said Durant any part of the said sum of twenty-seven thousand dollars, inasmuch as they had elected not to perform the condition of the said Durant's deed.

To the thirteenth interrogatory they answer, that they believe that the said Barker was employed by the said Lawrence, Saunders, and Nesmith to negotiate for some titles to estates, but these respondents have no personal knowledge thereof, and no knowledge of the particulars of such employment; that the said Lawrence, Saunders, and Nesmith did procure the titles to the lands in question, and many other lands, with the purpose of selling them to a corporation which they expected would be created, and which was afterwards created, viz: these respondents; and that the said Lawrence, Saunders, and Nesmith did afterwards sell and convey the said lands, through the said Storrow and the said Rand as trustees, to these respondents, and that these respondents did pay them therefor the several sums which they had paid, and the sum of thirty thousand dollars in addition thereto. And the said Lawrence, Saunders, and Nesmith did subscribe for and take stock of these respondents when this corporation was organized, and did become members thereof, together with a great number of other persons, the whole capital stock of these respondents being the sum of one million of dollars, all but eight or ten thousand dollars of which is actually paid in.

To the fourteenth interrogatory they answer, that the said Stor-

row and the said Rand were so far the agents of these respondents as to receive the said conveyance in trust for these respondents, as aforesaid.

To the fifteenth interrogatory they answer, that they believe that the said deeds were recorded, but they know not by whom nor when.

To the sixteenth and seventeenth interrogatories they answer, that, according to the best of their knowledge, information, and belief, they have already answered the same.

To the nineteenth interrogatory they answer, that they know not, and have not been informed, and cannot state, whether or not the facts therein inquired about existed or not.

To the twenty-first, twenty-fourth, and twenty-fifth interrogatories they say, that they have above answered the same, save that they know not of any notice thereof being given to the said Durant, except the notice to be implied from the recording thereof.

To the twenty-sixth interrogatory they answer, that they have already answered that the said conveyance from the said Storrow and Rand to the respondents was made on the seventh day of June, in the year eighteen hundred and forty-five; but they deny that these respondents, or to the best of their knowledge and belief, that the said Storrow or the said Rand, had notice of any claims of the said Durant, other than the expectation which he had that he might receive something in one event from these respondents, by way of gratuity, as is above set forth by these respondents in a former part of their answer.

To the twenty-seventh they answer, that they did sue one such a writ, but that it was in the year eighteen hundred and forty-seven, and not in the year eighteen hundred and forty-five.

And these respondents, further answering, say, that they deny that there was, at any time, any written agreement or any memorandum in writing whereby any contract between these respondents and the said Durant, or between the said Durant and the said Barker, respecting the said lands was evidenced, or any trust whatsoever relating thereto was declared. And these respondents say, that in and by the fifty-ninth chapter and thirtieth section of the Revised Statutes, it is enacted, that "no trust concerning lands, excepting such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing, signed by the party creating or declaring the same, or by his attorney." And in and by the fifty-ninth chapter and twenty-ninth section of the same statutes, it is further enacted, "All estates or interests in lands created or conveyed, without any instrument in writing, signed by the grantor, or by his attorney, shall have the force and effect of estates at will only; and no estate or interest in lands shall be assigned, granted, or surrendered, unless by a writing signed as aforesaid, or by the operation of law." And these respondents plead the said statutes, and in answer to so much of the

said bill as touches these respondents, or their allegod premises, agreements, and doings in the premises, or any title of the complainant to the said lands, they rely thereon as a bar. And these respondents further say, that in and by the fifty-ninth chapter and thirty-first section of the same statutes, it is further enacted, "No trust concerning lands, whether implied by law, created, or declared by the parties, shall defeat the title of a purchaser for a valuable consideration, and without notice of the trust." And these respondents, alleging that they are purchasers of the said premises for a valuable consideration, and without notice of the trust pretended by the said complainant, plead the said statute, and in answer to the said bill of complaint, or to so much thereof as touches these respondents, or their alleged premises, agreements, and doings in the premises, or any agreements of the said Barker, or any title of the complainant to the said lands, they rely thereon as a bar.

And these respondents deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of these respondents; all which matters and things these respondents are ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

[L. S.] CHAS. S. STORROW,
Treasurer.

CIRCUIT COURT U. S.,
Mass. District:

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE, & al.

The several answer of Daniel Saunders to the bill of complaint of Adolphus Durant.

This respondent, saving to himself all benefit of exception to the said bill of complaint for answer thereunto, or unto so much and such parts thereof as he is advised it is material or necessary for him to answer unto, answering, says:

In answer to the tenth and eleventh interrogatories—

That some time in the month of March, in the year eighteen hundred and forty-five, and as this respondent believes on the

nineteenth day of March, in that year, in consequence of certain previous negotiations between this respondent and the defendent, Stephen Barker, for obtaining his title to the real estate mentioned in the said bill, and of certain other negotiations with the said complainant to obtain whatever title he might possibly have to any part of the said premises, and also the inchoate right of dower of the wife of the said complainant, which last-mentioned negotiations were had in consequence of a suggestion therefor made by the said Barker to this respondent, that some small part of the said premises were in dispute, the said Durant claiming to own the same, and that Mrs. Durant had not released her right of dower; and that he, the said Barker, had spoken to the said Durant to assist him in selling the said premises, and had promised him all he could get over and above a certain sum, which this respondent believes was the sum of one hundred dollars—this respondent, together with this respondent's son, Daniel Saunders, jr., went to the house of the said Barker; thence, in company with the said Barker, went to the house of the said Durant, and there a bond was prepared by the said Daniel Saunders, jr., which was assented to by the said Durant, as proper to take the place of the said written contract, a copy whereof is annexed to the bill of complaint; and this respondent, though not required to do so, for greater certainty, annexes hereto a copy of this bond, and prays that the same may be taken as part of this answer; and this respondent did agree that the said Lawrence and Nesmith should sign the said bond, and that he would himself sign the same; but the said Lawrence and Nesmith did afterwards decline to execute the said bond, and this respondent did not execute the same, inasmuch as he was already bound by his said written memorandum, and his execution of the bond would add nothing thereto, and inasmuch as it was a bond designed to be executed by three persons, and not by one alone.

And this respondent, further answering, denies that it was agreed between this respondent and the said complainant that none of the instruments executed and delivered at the house of the said Barker, as mentioned in the said bill, should by either party be put on record, unless and until this respondent and the said Lawrence and Nesmith should, within the time specified in said memorandum signed by this respondent, elect to take the complainant's title on the terms mentioned in the said memorandum. And this respondent further denies that he made any agreement whatever, other than or different from the written agreement aforesaid, except that this respondent did agree that the bond aforesaid should be executed by the said Lawrence and Nesmith aforesaid.

And this respondent, further answering, denies that he was under any obligation or duty whatsoever to take the title of the said Durant, or that he violated any right of the said Durant, legal or equitable, in electing not to take the same. And this respondent submits to this honorable Court, that inasmuch as it is admitted

and shown by the said bill that the deed of the said Barker was executed, acknowledged, and delivered to this respondent as the free act and deed of the said Barker, and it did not, and could not, prejudice or affect the said Durant, who had express notice of the said deed to record the same; and inasmuch as it appears and is shown by the said bill, and also by the said memorandum signed by this respondent, that the said deed of the said Durant was executed, acknowledged, and delivered by him to this respondent as the free act and deed of the said Durant, it could not prejudice or affect the said Durant to record the same, and more especially that it did not so prejudice or affect him, inasmuch as the same was defeated by the non-performance of the condition in the said deed contained, and so nothing whatever is held under the said deed.

And this respondent further submits to this honorable Court, that the written memorandum aforesaid refers only to the said deed of the said Durant, and to the performance of the condition therein contained, and not in any manner to the deed of the said Barker, or the performance of the condition in the said Barker's deed contained; and this respondent insists that oral evidence of any other or different contract is not admissible in the premises.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL SAUNDERS.

U. S. A., *District of Massachusetts:*

March 15, 1848.

Personally appeared before me, the above-named Saunders, and made oath that the matters and things above stated are true, so far as the same are stated on his own knowledge; and so far as they are stated on the information of others he believes them to be true.

EDW. G. LORING,
Com'r.

CIRCUIT COURT UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al.

The several answer of Edward S. Rand to the bill of complaint of Adolphus Durant.

This respondent, saving to himself all benefit of exception to the said bill of complaint for answer thereunto, or unto so much and such parts thereof as he is advised it is necessary or material for him to answer unto, answering, says: He has been informed and believes it to be true, that the said complainant was formerly the owner of the lands in the said bill mentioned, with their appurtenances; and that while so the owner, he mortgaged the same at different times to sundry persons, to secure the payment of divers sums of money; and this respondent craves leave to refer to the mortgage deeds and assignments thereof, or to duly attested copies of the records thereof, when produced as part of this answer.

And this respondent hath been further informed and believes, that on or about the twenty-ninth day of March, in the year eighteen hundred and forty-three, the said Durant executed a deed which purported to convey the said lands, in fee, to one Jesse Sargent; and that the consideration of such conveyance was certain indebtedness theretofore existing from the said Durant to the said Sargent; and that the said Sargent did afterwards execute a certain deed which purported to convey the said lands to the said Barker, in fee-simple; and that the consideration of this last-mentioned deed was some small sum of money—if this respondent rightly remembers, the sum of five dollars.

And afterwards, to wit, on the twentieth day of October, in the year eighteen hundred and forty-three, the said Durant, on his own petition, was decreed an insolvent, under the law of the State of Massachusetts, commonly called the insolvent law; and one Jacob Howe, having been duly appointed his assignee, did sell, and by his deed, bearing date the day of , in the year eighteen hundred and forty-four, did undertake to convey, in fee-simple, unto one Joseph Foster the same equity of redemption, and all the right, title, and interest of the said Durant in the said premises.

And this respondent, further answering, says, that by a deed bearing date on the nineteenth day of March, in the year eighteen hundred and forty-five, and duly acknowledged and recorded, the said Barker conveyed unto the said Lawrence, Saunders, and Nesmith, in fee-simple, all his right, title, and interest in the said premises; conditioned to be void, if the said grantees, or their assigns,

should not, within forty-three days from the date thereof, pay to the said Barker, or his assigns, the sum of one hundred and twenty-five dollars; and this respondent is informed and believes, and therefore avers, that the said condition, having been complied with, the said Barker did thereupon, by a deed bearing date the twenty-sixth day of March, in the year eighteen hundred and forty-five, duly acknowledged and recorded, convey to the said Lawrence, Saunders, and Nesmith, in fee-simple absolute, all his right, title, and interest in and to the said premises.

And this respondent, further answering, says, that by a deed bearing date the first day of April, in the year eighteen hundred and forty-five, and duly acknowledged and recorded, the said Lawrence, Saunders, and Nesmith did convey unto this respondent and Charles S. Storrow, in fee-simple, upon the trust to convey the same to the Essex Company, the said lands in the said bill mentioned, together with other lands, for the valuable consideration of seventeen thousand nine hundred and ninety-two dollars and eighty-one cents, mentioned in the said deed, and for other valuable considerations to the said grantors paid.

And this respondent, further answering, says, that neither at the time of the said conveyance to this respondent and the said Storrow, nor at the time of the payment of all or any part of the said consideration therefor to the said Lawrence, Saunders, and Nesmith, had this respondent, or to the best of his knowledge and belief, had the said Storrow, or the said Essex Company, any notice that the said Barker at any time held the said premises upon any trust for the said Durant, or that the said Durant had any title whatsoever thereto, or that any fraud, deception, or undue influence, or trick of any kind, had been practised or attempted by any one upon the said Durant or the said Barker; or that any contract, agreement, or understanding with them or either of them, in any way touching the said premises, had been violated or not conformed unto.

And the said respondent, further answering, says, that afterwards assignments of sundry mortgages upon the said premises were obtained from the holders thereof unto the said Essex Company; and that, after the said assignments had been obtained, and while this respondent and the said Storrow were endeavoring to obtain assignments of the remainder of the said mortgages, this respondent was informed that one Robert Farley had obtained the title to the remainder of the said mortgages, and especially to a certain mortgage made by the said Durant, under which possession to make a foreclosure was taken on the sixth day of July, in the year eighteen hundred and forty-two; and the right of redeeming which last-mentioned mortgage would of course expire on the sixth day of July, in the year eighteen hundred and forty-five.

And this respondent was further informed, that the title to the right of redeeming the said premises, which had been conveyed or

attempted to be conveyed by the said Howe, as the assignee in insolvency of the said Durant, to the said Joseph Foster, had also come to the said Farley; and that he claimed to be the lawful owner of the right of redeeming the said premises from all the mortgages thereon; and denied that the title of the Essex Company, to whom this respondent and the said Storrow had then conveyed, was valid, upon the ground that the said deed from the said Durant to the said Sargent was void, under the insolvent laws of Massachusetts, and that the said Barker knew that the same was void when the said Sargent conveyed to him as aforesaid.

And thereupon, as this respondent has been informed and believes, in order to effect the redemption of the mortgages held by the said Farley as aforesaid, and one of which would otherwise be very soon foreclosed, the said Essex Company did file two bills in equity, in the Supreme Judicial Court of the State of Massachusetts, wherein the said Farley and Foster were made defendants, praying to redeem the mortgages held by the said Farley as aforesaid; and unto the said bills the said Farley and Foster did answer, and, among other things, did aver, that the said deed from the said Durant to the said Sargent was made with intent to defeat and defraud the creditors of the said Durant; and that, for that and other causes, the same was void as against the said Howe as his assignee; and that the said Howe had lawfully sold and conveyed the said equity of redemption unto the said Foster, and the said Foster had lawfully sold and conveyed the same to the said Farley. And the said respondents did further aver, that the said Durant made application to the master in chancery, before whom his proceedings in insolvency were pending, for a discharge; that the said Foster opposed his said application, and showed for cause that the said Durant had concealed property with intent to defraud his creditors; that the master refused to grant the discharge; that the said Durant appealed from the said decision of the master to the Supreme Judicial Court aforesaid; that in this last-mentioned court, the appeal being heard, the only cause shown by the said Foster for affirming the said decision of the master was, that the said deed from the said Durant to the said Sargent was fraudalent as against his creditors; and that for this cause, upon the said hearing, the said decision of the master was affirmed. And so the said Farley claimed to be the sole owner of the said right of redemption, and denied the title of the Essex Company thereto.

And this respondent, further answering, says, that as he is informed and believes, the said Storrow, in behalf of the said Essex Company, consulted the learned counsel employed by the said company to prosecute the said suit against the said Farley, respecting the probabilities of the said Farley's succeeding in establishing his aforesaid title, and whether or no it was expedient and proper for the Essex Company to purchase his said title; and being strongly advised so to do, the said Storrow did, in behalf of the said Essex

Company, purchase the aforesaid title of the said Farley, and did pay him therefor the sum of dollars; and the said title was conveyed to the said Essex Company, and the negotiations for the same with the said Farley were conducted by this respondent for the said Essex Company.

And this respondent, further answering, says, that he is informed and believes that the said Durant was informed of the institution and prosecution of the said suit against the said Farley and Foster, and knew that the Essex Company in the said suit claimed to be the owners of the said equity of redemption, under and by virtue of the said deeds from Durant to Sargent, and from Sargent to Barker, and Barker to Lawrence, Saunders, and Nesmith, and these last to this respondent and the said Storrow, and these last to the Essex Company; yet the said Durant not only was silent as to any defect in the said title of the Essex Company, and as to any fraud committed or attempted towards him, and as to any trust in his favor touching the said premises, but, as this respondent has been informed and believes to be true, he offered himself as a witness to support the title of the said company; and being questioned by B. R. Curtis, esquire, the counsel of the said company in the said suit, as to his interest, in order to know whether he was competent in point of law to testify in the said cause, he declared, in substance, that he had no claim to the said property; that he had no contract with any one which would give him a right to anything, however the said suit might be terminated; and that, although he expected to receive something from the Essex Company if they obtained a clear title to the said premises, this expectation was not founded on any contract, and that he relied entirely on the generosity of Mr. Lawrence.

And this respondent, further answering, says, that he has been informed and believes, that after the said Essex Company had acquired the title of the said Farley, as aforesaid, and after all incumbrances and expenses had been paid, the said Storrow did offer to give to the said Durant the sum of one thousand dollars; and this offer being rejected by the said Durant, the said Storrow, after conference with the said Lawrence, did thereupon offer to give to the said Durant the sum of seven thousand dollars, provided the wife of the said Durant would release her possibility of dower in the said premises, which offer the said Durant rejected.

And this respondent, further answering to the specific interrogatories to him proposed, says, that to the said first, second, and third interrogatories, he hath already answered.

To the twelfth interrogatory he answers, that he believes the said Lawrence, Saunders, and Nesmith, did not pay to the said Durant any part of the said sum of twenty-seven thousand dollars, inasmuch as they elected not to perform the condition of the said Durant's deed.

To the thirteenth interrogatory he answers, that he believes that

the said Barker was employed by the said Lawrence, Saunders, and Nesmith, to negotiate for some titles to estates, but this respondent hath no personal knowledge thereof, and no knowledge of the particulars of such employment. That the said Lawrence, Saunders, and Nesmith did procure the titles to the lands in question, and many other lands, with the purpose of selling them to a corporation which they expected would be created, and which was afterwards created, and called the Essex Company, and that the said Lawrence, Saunders, and Nesmith did afterwards sell and convey the said lands to the said corporation, through this respondent and the said Storrow, as trustees, and the said corporation did pay them therefor the several sums which they had paid, and the sum of thirty thousand dollars in addition thereto. And the said Lawrence, Saunders, and Nesmith did subscribe for and take stock of the said corporation when the same was organized, and did become members thereof, together with a great number of other persons, the whole capital stock of the said corporation being the sum of one million of dollars, all but eight or ten thousand dollars of which, as this respondent is informed and believes, is actually paid in.

To the fourteenth interrogatory he answers, that he and the said Storrow were so far the agents of the Essex Company as to receive the said conveyance in trust, as aforesaid.

To the fifteenth interrogatory he answers, that he believes the said deeds were recorded, but he knows not by whom nor when.

To the sixteenth and seventeenth interrogatories he answers, that according to the best of his knowledge, information, and belief, he has already answered the same.

To the nineteenth interrogatory he answers, that he knows not, and hath not been informed, and cannot state, whether the facts therein inquired about existed or not.

To the twenty-first and twenty-fifth interrogatories he says, that he hath above answered the same, save that he knows not of any notice thereof being given to the said Durant, except the notice to be implied from the recording thereof; and as to the matters inquired of in the said twenty-fifth interrogatory, this respondent hath no knowledge save what he has already set forth.

To the twenty-sixth interrogatory he answers, that he hath already answered that the said conveyance from himself and the said Storrow to the said Essex Company was made on the seventh day of July, in the year eighteen hundred and forty-five; but he denies that this respondent, or, to the best of his knowledge and belief, that the said Storrow or the said Essex Company had notice of any claims of the said Durant, other than the expectation which he had that he might receive something in one event from the said Essex Company by way of gratuity, as is above set forth by this respondent in a former part of his answer.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged,

without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD S. RAND.

U. S. A., *Mass. District*,

Mar. 15, 1848.

Personally appeared before me the above-named Rand, and made oath that the matters and things above stated, so far as they are stated on his own knowledge, are true; and so far as they are stated on the information of others, he believes them to be true.

Before me,

EDW. G. LORING,
Com'r.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & AL.

The several answer of Charles S. Storrow to the bill of complaint of Adolphus Durant.

This respondent, saving to himself all benefit of exception to the said bill of complaint, for answer thereunto, or unto so much and such parts thereof as he is advised it is necessary or material for him to answer unto, answering, says: He has been informed, and believes it to be true, that the said complainant was formerly the owner of the lands in the said bill mentioned, with their appurtenances; and that while so the owner he mortgaged the same at different times to sundry persons, to secure the payment of divers sums of money; and this respondent craves leave to refer to the mortgage deeds and assignments thereof, or to duly attested copies of the records thereof, when produced, as part of this answer.

And this respondent hath been further informed and believes, that on or about the 29th day of March, 1843, the said Durant executed a deed which purported to convey the said lands, in fee, to one Jesse Sargent, and that the consideration of such convey-

ance was certain indebtedness theretofore existing from the said Durant to the said Sargent; and that the said Sargent did afterwards execute a certain deed, which purported to convey the said lands to the said Barker, in fee-simple, and that the consideration of this last-mentioned deed was some small sum of money—if this respondent rightly remembers, five dollars.

And afterwards, on the 20th day of October, 1843, the said Durant, on his petition, was decreed an insolvent under the laws of the State of Massachusetts, commonly called the insolvent law; and one Jacob Howe having been duly appointed his assignee, did sell, and by his deed bearing date on the first day of June, 1844, did undertake to convey, in fee-simple, unto one Joseph Foster, the same equity of redemption, and all the right, title, and interest of the said Durant in the said premises.

And this respondent, further answering, says, that by a deed bearing date on the 19th day of March, 1845, and duly acknowledged and recorded, the said Barker conveyed unto the said Lawrence, Saunders, and Nesmith, in fee-simple, all his right, title, and interest in the said premises, conditioned to be void if the said grantees or their assigns should not, within forty-three days from the date thereof, pay to the said Barker or his assigns the sum of one hundred and twenty-five dollars; and this respondent is informed and believes, and therefore avers, that the said condition having been complied with, the said Barker did thereupon, by a deed bearing date on the 26th day of March, 1845, duly acknowledged and recorded, convey to the said Lawrence, Saunders, and Nesmith, in fee-simple absolute, all his right, title, and interest in and to the said premises.

And this respondent, further answering, says, that by a deed bearing date on the 1st day of April, 1845, and duly acknowledged and recorded, the said Lawrence, Saunders, and Nesmith did convey unto this respondent and Edward S. Rand, in fee simple, upon the trust to convey the same to the Essex Company, the said lands in the said bill mentioned, together with other lands, for the valuable consideration of seventeen thousand nine hundred and ninety-two dollars and eighty-one cents, mentioned in the said deed, and for other valuable considerations to the said grantors paid.

And this respondent, further answering, says, that neither at the time of the said conveyance to this respondent and the said Rand, nor at the time of the payment of all or any part of the said consideration therefor to the said Lawrence, Saunders, and Nesmith, had this respondent, or to the best of his knowledge and belief, had the said Rand or the said Essex Company any notice that the said Barker at any time held the said premises upon any trust for the said Durant, or that the said Durant had any title whatsoever thereto, or that any fraud, deception, or undue influence, or trick of any kind, had been practised or attempted by any one upon the said Durant or the said Barker, or that any contract, agreement,

or understanding, in any way touching the said premises with them, or either of them, had been violated or not conformed unto.

And this respondent, further answering, says, that some time after the making of the said conveyance by the said Lawrence, Nesmith, and Saunders to this respondent and the said Rand, in trust aforesaid, but the precise time this respondent cannot state, this respondent was informed, though he cannot now remember by whom, that the state of the mortgages on the said premises was such as to require immediate action, and that the said Durant had got into some difficulty with his creditors, in some way connected with this property, and that he wanted his mortgage paid off, or to have the title replaced as it was before he had negotiated with Lawrence, Nesmith, and Saunders; but this respondent knew nothing of what deeds or bonds had been given, or what contracts had been made by or with the said Durant, or what claims, real or pretended, he had or made to the said premises.

But very soon afterwards, though the precise time this respondent does not remember, he only knows it was before any of the mortgages upon the said premises had been purchased by the Essex Company, this respondent saw the said Durant, who informed him that he had been to Lowell and seen Mr. Lawrence, meaning, as this respondent understood, the said Samuel Lawrence, and had concluded with him to leave everything in the hands of the Essex Company, and that he would assist the company in obtaining the assignment of the mortgages upon the said premises, and clearing off all the incumbrances thereon, so as to make their title perfect, and that the company should furnish all the money required, and when they got through, and had obtained a perfect title, if they obtained it a very low rate, they must do what was right and fair by him, and that it was to be left to the company to decide what they would do for him.

This respondent did not know what, if any, equitable claims the said Durant had, nor did he understand that the said Lawrence had any power to bind the Essex Company to any arrangement whatever; but inasmuch as he had great confidence that whatever arrangement the said Lawrence had made was just and proper, and inasmuch as the arrangement, as stated by the said Durant, seemed to this respondent to be unobjectionable, as it was expressly declared that it was to be left to the company itself to decide what, if anything, was to be allowed to the said Durant, this respondent, in behalf of the Essex Company, assented thereto. And afterwards assignments of sundry mortgages were obtained from the holders thereof under the said Essex Company.

And this respondents avers, that in taking the said assignments, and in paying the considerations therefor, which in all cases were the full amounts secured by the said mortgages, this respondent acted on the understanding and belief that he was proceeding to carry into effect what had previously been proposed, as aforesaid, by the

said Durant, and assented to by this respondent; and he was confirmed in this belief by the fact that the said Durant did give some personal assistance and aid to procure some of the said assignments to be made, and seemed to this respondent to be thus acting in conformity with his proposal aforesaid.

And this respondent, further answering, says, that after the said assignments had been obtained, and they were endeavoring to obtain assignments of the remainder of the said mortgages, this respondent was informed that one Robert Farley had obtained the title of the remainder of the said mortgages, and especially to a certain mortgage made by the said Durant, under which possession to make a foreclosure was taken on the sixth day of July, 1842, and the right of redeeming which last-mentioned mortgage would of course expire on the sixth day of July, 1845.

And this respondent was further informed, that the title to the right of redeeming the said premises which had been conveyed, or attempted to be conveyed, by the said Howe, as the assignee in insolvency of the said Durant, to the said Joseph Foster, had also come to the said Farley, and that he claimed to be the lawful owner of the right of redeeming the said premises from all the mortgages thereon, and denied that the title of the Essex Company, to whom this respondent and the said Rand had them conveyed, was valid, upon the ground that the said deed from the said Durant to the said Sargent was void under the insolvent laws of Massachusetts, and that the said Barker knew the same was void when the said Sargent conveyed to him as aforesaid.

And thereupon, in order to effect the redemption of the mortgages held by the said Farley as aforesaid, and one of which would otherwise be very soon foreclosed, the said Essex Company did file two bills in equity in the Supreme Judicial Court of the State of Massachusetts, wherein the said Farley and Foster were made defendants, praying to redeem the mortgages held by him, the said Farley, as aforesaid; and unto the said bills the said Farley and Foster did answer, and among other things did aver, that the said deed from the said Durant to the said Sargent, was made with intent to defeat and defraud the creditors of the said Durant, and that for that and other causes, the same was void as against the said Howe, as his assignee, and that the said Howe had lawfully sold and conveyed the said equity of redemption unto the said Foster, and the said Foster had lawfully sold and conveyed the same to the said Farley. And the said respondents did further aver, that the said Durant made application to the master in chancery before whom his proceedings in insolvency were pending, for a discharge; that the said Foster opposed his application, and showed for cause that the said Durant had concealed property with intent to defraud his creditors; that the master refused to grant the discharge; that the said Durant appealed from the said decision of the master of the Supreme Judicial Court aforesaid; that in this last-mentioned court, the appeal being

heard, the only cause shown by the said Foster for affirming the said decision of the master was, that the said deed from the said Durant to the said Sargent was fraudulent as against his creditors, and that for this cause, upon the said hearing, the said decision of the master was affirmed. And so the said Farley claimed to be the sole owner of the said right of redemption, and denied the title of the Essex Company thereto.

And this respondent, further answering, says, that in behalf of the Essex Company, he consulted the learned counsel employed by the said company to prosecute the said suit against the said Farley, respecting the probabilities of the said Farley's succeeding in establishing his aforesaid title, and whether or no it was expedient and prope. for the Essex Company to purchase his said title, and being strongly advised so to do, this respondent did, in behalf of the said Essex Company, purchase the aforesaid title of the said Farley, and did pay him therefor the sum of dollars, and the said title was conveyed to the said Essex Company.

And this respondent, further answering, says, that the said Durant was informed of the institution and prosecution of the said suit against the said Farley and Foster, and knew that the Essex Company in the said suit claimed to be the owner of the said equity of redemption, under and by virtue of the said deeds from himself to Sargent, and from Sargent to Barker, and Barker to Lawrence, Nesmith, and Saunders, and these last to this respondent and the said Rand, and these last to the Essex Company, yet the said Durant not only was silent as to any defect in the said title of the Essex Company, and as to any fraud committed or attempted towards him, and as to any trust in his favor touching the said premises, but as this respondent has been informed, and believes to be true, he offered himself as a witness to support the title of the said company; and being questioned by B. R. Curtis, esq., the counsel of the said company in the said suit, as to his interest, in order to know whether he was competent in point of law to testify in the said cause, he declared, in substance, that he had no claim to the said property; that he had no contract with any one which would give him a right to anything, however the said suit might be terminated, and that although he expected to receive something from the Essex Company, if they obtained a clear title to the said premises, this expectation was not founded on any contract, and that he relied entirely on the generosity of Mr. Lawrence.

And this respondent declares, that throughout all the proceedings aforesaid he acted in behalf of the said Essex Company, in the belief and on the faith that the said Durant neither had nor pretended to have any right, title, or interest in the said premises, and that it was entirely in the discretion of the Essex Company what, if anything, they would give to the said Durant after their title should be found complete and perfect.

And this respondent, further answering, says, that after the said

Essex Company had acquired the title of the said Farley as aforesaid, and after all incumbrances and expenses had been paid, this respondent, in behalf of the Essex Company, being desirous to do in good faith all that the said Durant could reasonably expect from said company, made a computation, ascertained what sum of money the said premises had cost the said company, and found it was upwards of twenty-six thousand dollars; and inasmuch as the sum of twenty-seven thousand dollars was the highest sum which this respondent had ever heard the said Durant mention as the value of the said premises, this respondent did offer to pay to the said Durant the sum of one thousand dollars; and this offer being rejected by the said Durant, and this respondent being truly anxious to satisfy the said Durant, and also to satisfy the said Lawrence, and having conferred with the said Lawrence on the subject, did thereupon offer to give to the said Durant the sum of seven thousand dollars, provided the wife of the said Durant would release her possibility of dower in the said premises, which offer the said Durant rejected. And this respondent says, that he made the offer last aforesaid solely on account of the expectations which the said Durant had had and expressed, as aforesaid, that he should receive something from the company when the title to the premises was clear, and for the purpose of offering to do as much as any one could expect to be done, and with the hope that the said Durant would be entirely content and satisfied, and as a liberal exercise of the discretion of the company, upon which alone the said Durant had relied, as above stated, and not because this respondent believed, for he did not believe, that the said Durant had any claim whatever which could be recognized by any court, either upon the said premises or upon the said company.

And this respondent, further answering to the specific interrogatories to him proposed, says, that to the first, second, and third interrogatories he hath already answered.

To the twelfth interrogatory he answers, that he believes the said Lawrence, Nesmith, and Saunders did not pay to the said Durant any part of the said sum of twenty-seven thousand dollars, inasmuch as they elected not to perform the condition of said Durant's deed.

To the thirteenth interrogatory he answers, that he believes that the said Barker was employed by the said Lawrence, Saunders, and Nesmith, to negotiate for some titles to estates, but this respondent hath no personal knowledge thereof, and no knowledge of the particulars of such employment. That the said Lawrence, Nesmith, and Saunders did procure the titles to the lands in question, and many other lands, with the purpose of selling them to a corporation, which they expected would be created, and which was afterwards created and called the Essex Company; and that the said Lawrence, Nesmith, and Saunders did afterwards sell and convey the said lands to the said corporation, through this respondent and the said

Rand, as trustees, and the said corporation did pay them therefor the several sums which they had paid, and the sum of thirty thousand dollars in addition thereto. And the said Lawrence, Nesmith, and Saunders did subscribe for and take stock of said corporation, when the same was organized, and did become members thereof, together with a great number of other persons—the whole capital stock of the said corporation being the sum of one million of dollars, all but eight or ten thousand dollars of which is actually paid in.

To the fourteenth interrogatory he answers, that he and the said Rand were so far the agents of the Essex Company as to receive the said conveyance in trust as aforesaid.

To the fifteenth interrogatory he answers, that he believes the said deeds were recorded, but he knows not by whom nor when.

To the sixteenth and seventeenth interrogatories he answers, that according to the best of his knowledge, information, and belief, he hath already answered the same.

To the nineteenth interrogatory he answers, that he knows not, and hath not been informed, and cannot state, whether or not the facts therein inquired about existed or not.

To the twenty-first interrogatory he says, that he hath above answered the same, save that he knows not of any notice thereof being given to the said Durant, except the notice to be implied from the recording thereof.

To the twenty-fourth and twenty-fifth interrogatories he says, that he has already answered the same.

To the twenty-sixth interrogatory he answers, that he hath already answered that the said conveyance from himself and the said Rand to the said Essex Company, was made on the seventh day of June, 1845; but he denies that this respondent, or, to the best of his knowledge and belief, the said Rand or the said Essex Company had notice of any claims of the said Durant, other than the expectation which he had, that he might receive something in one event from the said Essex Company by way of gratuity, as is above set forth by this respondent in a former part of his answer.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is charged by the said bill, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CHAS. S. STORROW.

U. S. A., *Mass. District.*

Mar. 16, 1847.

Personally appeared before me the above-named Storrow, and made oath that the matters and things above stated were true, so far as they were stated on his own knowledge; and, so far as they were stated on the information of others, he believed them to be true.

EDW. G. LORING,
Com'r.

CIRCUIT COURT U. S.,
Mass. Dis.

ADOLPHUS DURANT
vs.
THE ESSEX COMPANY & al.

The several answer of Stephen Barker to the bill of complaint of Adolphus Durant.

This respondent, saving to himself all benefit of objections to the said bill of complaint, for answer thereunto, or unto so much and such parts thereof as he is advised it is material and necessary for him to answer unto, answering—

To the first interrogatory says, that he admits that the complainant was once the owner and in possession of the parcels of land, with the appurtenances, in his said bill of complaint described.

To the second interrogatory he answers, that he believes, and therefore admits, that the complainant did mortgage the said parcels of land, with the appurtenances, to various persons, and for various sums, to a large amount in the whole.

To the third interrogatory he answers, that he admits that on the twenty-ninth day of March, eighteen hundred and forty-three, the said complainant did convey unto Jesse Sargent, in fee-simple, subject to the mortgages above referred to, the said lands, with their appurtenances; and that the said Sargent, by his deed, bearing date September the eleventh, A. D. 1843, in consideration of fifteen dollars, did convey the same premises to this respondent, in fee-simple.

In answer to the fourth interrogatory he says, that on or very near the twenty-fifth day of January, eighteen hundred and forty-five, this respondent did say to the said Durant, in substance, that he might find a purchaser for the said property, and have all it would bring over and above some small sum which this respondent named, and which, as well as he now remembers, was one hundred dollars; but this respondent denies that he and the said Durant

made the contract stated in the said bill—that in consideration of the said Durant's promise to pay to this respondent the sum of one hundred dollars, or any other sum, this respondent would hold the said lands for the said Durant's benefit, and that the said Durant might sell them and receive all the proceeds; and that this respondent would not sell or convey them to any one, except upon the order of the said Durant; and this respondent denies that there was any agreement or understanding other than is above stated; and especially does this respondent deny that there was, at any time, any written agreement or any memorandum in writing, whereby any contract between himself and the said Durant respecting the said lands was evidenced, or any trust whatsoever relating thereto was declared. And this respondent says, that in and by the fifty-ninth chapter and thirtieth section of the Revised Statutes of Massachusetts, it is enacted, that "No trust concerning lands, excepting such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing, signed by the party creating or declaring the same, or by his attorney." And in and by the fifty-ninth chapter and twenty-ninth section of the same statutes it is further enacted, "All estates or interests in lands, created or conveyed without any instrument in writing signed by the grantor, or by his attorney, shall have the force and effect of estates at will only; and no estate or interest in lands shall be assigned, granted, or surrendered, unless by a writing signed as aforesaid, or by the operation of law." And the respondent pleads the said statutes; and in answer to so much of the said bill of complaint as touches this respondent, or his alleged promises, agreements, and doings in the premises, he relies thereon as a bar.

To the fifth interrogatory he answers, that although the above-mentioned verbal privilege to the said Durant to sell the said lands was merely voluntary on the part of this respondent, yet when the said Durant afterwards applied to this respondent, and informed him that he had agreed to sell the said lands to one Larkin Thorndike, this respondent was willing to convey the same on receiving the aforesaid sum of one hundred dollars, and that the said Durant should have to his own use any further proceeds; and he did execute a deed of conveyance thereof to the said Thorndike, and give the same to the said Durant, not to be made use of unless the said sum of one hundred dollars should first be paid to this respondent; and this respondent admits that he so executed the said deed, because he had previously given the said Durant the privilege aforesaid, but not otherwise. And the said deed was afterwards returned to this respondent unrecorded, and was cancelled.

To the sixth, seventh, eighth, and ninth interrrogatories he answers, that before the said conveyance from this respondent to the said Thorndike, the said defendant Saunders applied to this respondent to purchase the said lands; and after learning what this respondent's title was, he expressed himself not satisfied therewith,

because the right to dower of the wife of the said Durant was not released, and there were some doubts about a small piece of land on the north side of Spicket river, near the paper-mill dam, and some facts respecting some of the mortgages which this respondent did not distinctly understand; and the said Saunders, for these reasons, wished to obtain the release of the said Durant and his wife as a further assurance of the title of this respondent, and employed this respondent to negotiate with the said Durant for the same; and this respondent did so, and found that the said Durant demanded the sum of twenty-two or twenty-four thousand dollars, first deducting therefrom the amount of the incumbrances on the said lands, and the same Saunders having refused to accede to these terms, the negotiation was then ended. But afterwards, and after the said deed had been executed, as aforesaid, the said Saunders again requested this respondent to negotiate further with the said Durant, and this respondent did inform the said Saunders of the existence of the said deed, and on this respondent's request, he got the said deed and restored it to this respondent; and after a good deal of conversation between the said Saunders, Durant, and this respondent, it was finally agreed between the said Saunders and Durant that the said Durant should give to the said Saunders a deed conveying all his the said Durant's right and title, and the right and title of his wife, in and to the whole of the said lands, conditioned to be void unless the grantee should pay to the grantor a certain sum of money, which this respondent now believes from recollection to have been the sum of five hundred dollars, within a certain number of days; and the said Saunders, Nesmith, and Lawrence were to execute and deliver to the said Durant a bond, conditioned to pay him the sum of twenty-seven thousand dollars, first deducting therefrom the amount of all mortgages, and incumbrances, and costs necessary to be paid to obtain a clear title. And the said Durant and his wife did thereupon execute and deliver to the said Saunders such a conditional deed, and the paper annexed to the said bill having been prepared by this respondent, was signed by the said Saunders, it being understood that it was to be in lieu of the said bond until the same could be prepared and executed. And this respondent remembers that the said Durant did say to the said Saunders that the said deed must not be put on record unless the grantees concluded to take the title, meaning, as this respondent understood, unless they concluded to perform the condition of the deed, and of the bond to be given, to which observation of the said Durant the said Saunders made no reply. And this respondent, further answering, says that, at the interview last-above mentioned, this respondent, at the request of the said Durant, prepared and executed and delivered to the said Saunders a deed which bears date on the 19th day of March, A. D. 1845, and was acknowledged on the 20th day of March, A. D. 1845, whereby he conveyed his right and title to the lands held by him, as aforesaid, unto the said

Saunders, Lawrence, and Nesmith, in fee-simple, with covenants of good right to sell and convey as aforesaid, and of warranty against all persons claiming by or under this respondent, conditioned to be void unless the grantees should pay to this respondent the sum of one hundred and twenty-five dollars within the space of forty-three days. And this respondent says that this last-mentioned deed was executed and delivered by him, with the knowledge and assent, and at the request of the said Durant, and afterwards the said grantees having duly performed the said condition, this respondent did, at their request, execute and deliver to them another deed of the same lands, bearing date on the 26th day of March, 1845, which last deed was absolute, and not conditional, and was intended by the parties to convey absolutely and without condition the same title conveyed by the said conditional deed of this respondent. And this respondent denies all fraudulent intent on his part, and avers that in good faith, and with the knowledge and at the request of the said Durant, this respondent, for the valuable consideration aforesaid, to him paid as aforesaid, conveyed and assured all the title in and to the said lands by him held as aforesaid, unto the said Lawrence, Nesmith, and Saunders, in fee-simple absolute, and free of all incumbrances by this respondent made or suffered. And this respondent, further answering, says, that if it was the intention of the said Durant, at the time when the said conditional deed of this respondent was by him executed and delivered, containing the covenants aforesaid, to insist that the title held by this respondent, and conveyed by him as aforesaid, with covenants of good right to sell and convey, and of freedom from all lawful claims under this respondent, was in fact incumbered by any trust in favor of the said Durant, and that this respondent had not good right to sell and convey the same, the said Durant did thereby commit a fraud on this respondent, by requesting him to make such conveyance, and by not apprising him of such his intention.

To the tenth interrogatory he answers, that a bond was prepared, and on the following day assented to by the said Durant and Saunders as a substitute for the said paper marked A; and the said Saunders was to get it executed by the said Lawrence and Nesmith, and execute it himself.

To the eleventh and twelfth interrogatories he answers, that he knows not that this bond was ever executed, or anything paid to the complainant.

To the thirteenth interrogatory he says, that he had no general retainer or employment from or by the said Lawrence, Saunders, and Nesmith, who did buy lands with the expectation that a company would be formed to whom they intended to convey the same, as this respondent believes; and he knows a company was in fact incorporated, and it was called the Essex Company, and he has heard and believes that that the said Lawrence, Saunders, and Nesmith are holders of stock therein. This respondent was employed by

them at different times to negotiate for lands for them, but not for any of the lands now in question. This respondent has been informed and believes, that the said Storrow and Rand were, and that the said Storrow still is, in some way in the employ of the said company, but of the nature and extent of such agency he has no knowledge.

To the fifteenth interrogatory he answers, that he has no knowledge whether the said Durant's deed was recorded, or notice given him thereof.

To the sixteenth and seventeenth interrogatories he says, that he has already answered.

To the eighteenth interrogatory he says, that he hath been informed and believes, that the said Saunders, Nesmith and Lawrence did give notice to the said Durant, before the expiration of the time agreed on, that they should not take his title under the said conditional deed.

To the nineteenth interrogatory he answers, that he believes that the interview referred to therein did take place, either on the 18th or 19th of March, 1845, at the house of this respondent, but he knows not when the deed was recorded.

To the twentieth interrogatory he answers, that he has already answered.

To the twenty-first interrogatory he answers, that he hath no knowledge thereof.

To the twenty-second interrogatory he answers, that early in April, but the precise time this respondent does not remember, he went with the said Durant, at his request, to Lowell, and there had an interview with the said Saunders, Lawrence, and Nesmith, and the said Durant did complain to them of their refusal to execute the said bond, and to take his title on the terms above mentioned.

To the twenty-third and twenty-fourth interrogatories he says, that the said Lawrence, on hearing the representations of the said Durant, did express regret that any difficulty had arisen; and the Durant proposed to the said Lawrence that the Essex Company should go on and pay off all the incumbrances, so as to clear the title, and then they might either pay to the said Durant the difference between the amount so paid by them and the sum of twenty-seven thousand dollars, and take his title and his wife's right of dower, or the company might then refuse to take the title, and he could sell it in the market. This respondent understood that the said Lawrence, in behalf of the Essex Company, assented to the proposal above made, and gave the said Durant to understand that if the Essex Company did not comply with the terms proposed, the papers should be given up. This respondent has been informed and believes, that the said Durant did render assistance to the said Essex Company in obtaining assignments of some of the mortgages on the said lands, and also in a suit in equity between one Farley

and the Essex Company; but of the particulars thereof this respondent knows nothing.

To the twenty-fifth interrogatory he answers, that all he knows, of his own knowledge, is, that after the suit in equity between the said Essex Company and the said Farley had been settled, and the whole title cleared of incumbrances, this respondent was present at an interview between the said Durant and the said Lawrence, which was arranged by appointment between them; and the said Lawrence did then and there, in behalf of the Essex Company, propose and offer to the said Durant to settle with him, according to the understanding had between the said Durant and himself, in presence of this respondent as above mentioned, and that he, the said Lawrence, would execute all the necessary papers and vouchers, and ascertain correctly the sum to be paid to the said Durant in conformity with the proposals theretofore made by the said Durant, and assented to by the said Lawrence as aforesaid; and the said Durant refused so to do.

To the twenty-sixth interrogatory he answers, that he knows nothing of the matters therein inquired of.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

STEPHEN BARKER.

U. S. A., *District of Mass.:*

March 15, 1848.

Personally appeared before me the above-named Barker, who made oath that the matters and things above stated, so far as the same are stated on his own knowledge, are true; and that, so far as they are stated on the information of others, he believes them to be true.

EDW. G. LORING,
Com'r.

And thence, this cause was continued to the May Term, A. D. 1848, of this Court, when, to wit: on the 21st day of August, A. D. 1848, the answer of Samuel Lawrence was filed in the clerk's office, and is in the words following, to wit:

CIRCUIT COURT U. S.,
Mass. District:

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al.

The several answer of Samuel Lawrence to the bill of complaint of Adolphus Durant.

This respondent, saving to himself all benefit of objection to the said bill of complaint, for answer thereunto, or unto such parts thereof as he is advised it is necessary for him to answer unto, says:

To the first interrogatory, that he is informed and believes that the said Durant was once the owner of the premises in the said bill mentioned.

To the second interrogatory, that he believes the said Durant did mortgage the said premises to sundry persons for different sums of money, amounting in the whole to a considerable sum.

To the third interrogatory, that he believes that the said Durant did make a deed which purported to convey the said lands to the said Sargent, and that the said Sargent did make a deed which purported to convey the said lands to the said Barker, but he knows not that he ever saw the said deeds, and cannot state the dates thereof.

To the sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth interrogatories, that he has no knowledge or information respecting the matters therein required about, save that he was informed that some contract was made by the said Saunders with the said Durant, which was reduced to writing; and that the said Durant expected this respondent, and the said Nesmith and Saunders, to sign some bond, which was not signed; and that no part of the said sum of twenty-seven thousand dollars was ever paid by this respondent to the said Durant.

To the thirteenth interrogatory, that he believes the said Barker was employed by one of this respondent's associates to aid them in procuring some titles to lands, but not to the lands in question.

That this respondent, and the said Nesmith and Saunders, did procure, by purchase, titles to the lands in question, and sundry other lands in that vicinity, with the expectation that a corporation would afterwards be formed, and that they should sell their said lands to that corporation at a profit. That such corporation was afterwards formed and organized, and called the Essex Company, and they did sell the same lands to that corporation for the sum of thirty thousand dollars in addition to what they had paid therefor.

That this respondent, and the said Nesmith and Saunders, did

subscribe for stock in the said corporation, and become members thereof.

To the fourteenth interrogatory he says, that the said Rand and Storrow did receive a conveyance of the said lands in the said bill mentioned, and other lands, in trust for the Essex Company.

To the fifteenth, sixteenth, and seventeenth interrogatories he answers, that he did not procure the deeds therein mentioned to be recorded. He believes the same were recorded, but he knows not when, nor by whom in particular the same was procured to be done; and he has no knowledge or information respecting the other particulars therein required about, save what is contained in the said bill.

To the eighteenth interrogatory he says, he believes such information was given, but he cannot set forth when in particular.

To the nineteenth interrogatory he says, he has no knowledge or information respecting the matters herein inquired about, save what is contained in the said bill.

To the twentieth interrogatory he says, that he has been informed and believes, that the said Barker did execute and deliver to the said Saunders a deed of conveyance, which purported to convey his right, title, and interest to the said lands unto this respondent and the said Nesmith and Saunders, conditioned to pay a sum of money, and that he afterwards executed and delivered an absolute deed thereof, purporting to convey the same to the same persons, and that both the said deeds were recorded; but this respondent did not act personally in any part of either transaction; and cannot state when, in particular, the same were dated or delivered, or by whom, in particular, the same were delivered for record. This respondent made no representations to the said Barker to obtain either of these deeds, and he knows not what representations, if any, were made to him by any one for that end.

To the twenty-first interrogatory he answers, that this respondent and the said Saunders and Nesmith, did execute and deliver a deed of conveyance to the said Storrow and Rand, as trustees of the Essex Company, on the first day of April, in the year eighteen hundred and forty-five, for the valuable consideration of seventeen thousand nine hundred and ninty-two dollars and eighty-one cents, expressed in the said deed, and the sum of thirty thousand dollars paid them for these and other lands.

To the twenty-second interrogatory he answers, that soon after the first day of April, in the year eighteen hundred and forty-five, the said Durant and Barker did call on this respondent at Lowell, and the said Durant complained that this respondent, and the said Nesmith and Saunders, had got the said Durant's lands without paying for them. This respondent had then no knowledge whatever of what had been done by his said associates, Saunders and Nesmith. In reply to the said Durant's complaint, this respondent informed

him that no advantage should be taken of him, and he would see that the papers were restored, and he remitted to all his rights. This respondent made no question with the said Durant about his rights, and entered into no investigation thereof, his object being simply to take care that a man who complained that this respondent and his associates had got their lands without paying for them, should be at once assured that he might have them back again.

To the twenty-fourth interrogatory he answers, that within a short time after the interview last mentioned, and before the first day of May, as this respondent is quite confident, the said Durant came again to Lowell, and called on this respondent, and informed him that he had been thinking of the offer which this respondent had made to him, that he was very much embarrassed by debts, and could do nothing with the lands if he had them, for they were heavily mortgaged, some of the mortgages were nearly run out, and Farley was claiming the right of redemption; and that if the Essex Company would go on and make all the necessary advances to get a clear title, when they should have succeeded, if it proved that they had got the lands cheap, they must consider him, and allow him what, under the circumstances, they should think right; that he was willing to leave it entirely to the Essex Company to say what should be paid, and that he would give his assistance to the company in obtaining the mortgages, and in getting a clear title. And this respondent, though he had no knowledge of what the said Durant's rights, if any, were, yet thinking the proposal of the said Durant a reasonable one, informed him that he believed such an arrangement would be assented to by the Essex Company, and he might consider it as so understood, and thereupon the interview ended.

And this respondent afterwards informed Charles S. Storrow, who was the treasurer and general agent of the Essex Company, of what had passed between this respondent and the said Durant at the interview last aforesaid; and this respondent believes that what has been since done both by the said Durant and the said company in respect to obtaining the said mortgage titles, and the titles of the said Farley, has been done under the expectation so expressed and assented to as last aforesaid, but this respondent hath no knowledge of what in particular hath been done.

To the twenty-fifth interrogatory he answers, that after the Essex Company, by means of an adjustment made with the said Farley, had, as this respondent was informed, obtained what was considered to be a clear title to the said lands, this respondent heard that there was some difficulty between the said Durant and the said company as to the said Durant's claims, and in consequence of what had passed between this respondent and the said Durant as above mentioned, this respondent felt a strong desire that the said company should conduct towards the said Durant not only justly,

but liberally, and therefore this respondent sought for and had two interviews with the said Durant, in company with the said Storrow, and after learning what the said lands had cost the said company, and that the sum of such cost amounted to upwards of twenty-six thousand dollars, and that twenty-seven thousand dollars was the highest sum at which the said Durant had estimated the value of the said property, this respondent, from a desire to have the said company deal generously with the said Durant, did advise the said Storrow to offer to him the sum of seven thousand dollars, provided that the wife of the said Durant would release her possibility of dower; and the said offer having been made, and the said Durant having rejected what this respondent believed to be a very liberal offer in a case where the company was under no legal obligation to pay anything, and the said company having thus fairly and liberally exercised its discretion, to which the said Durant did agree to submit, and this respondent's assurance to the said Durant having been fully redeemed, this respondent has had no further interview with the said Durant, nor any further connection with the matter.

And this respondent denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAML. LAWRENCE.

MASSACHUSETTS DISTRICT,
Trial Circuit:

This first day of August, A. D. 1848.

Personally appeared before me, the above named Samuel Lawrence, and declared under oath the foregoing matters, so far as the same were stated on his own knowledge, were true; and so far as they were stated on the information of others, he believed them to be true.

EDW. G. LORING,
Com'r.

And afterwards, to wit, on the 14th day of September, A. D. 1848, the following demurrer was filed in the case, viz:

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts:

In Equity.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE and others.

The demurrer of Daniel Saunders, junior, one of the defendants to the bill of complaint of the said Adolphus Durant, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainant hath not by his said bill made such a case as entitles him in a Court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill, or any of such matters: wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendent doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable Court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

B. R. CURTIS,
Solr. and Counsel for said Saunders.

And on the 29th day of said September, the following answer of John Nesmith was filed in the case, viz:

CIRCUIT COURT U. S.,
Mass. District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al.

The several answer of John Nesmith to the bill of complaint of Adolphus Durant.

This respondent, saving to himself all benefit of objection to the said bill of complaint for answer thereunto, or unto so much and such parts thereof as he is advised it is material for him to answer unto, answering, says:

To the first interrogatory, that he has no certain knowledge

thereof, but he believes the said Durant was at one time the owner of the lands and appurtenances in the said bill described.

To the second interrogatory, that he has no certain knowledge thereof, but he believes that the said Durant did mortgage the same to various persons, and to a considerable amount.

To the third interrogatory, that he has no certain knowledge thereof, but he believes that the said Durant did make a deed of his redemption, which purported to convey the same to the said Sargent, and that the said Sargent did afterwards make a deed which purported to convey the same to the said Barker.

To the sixth interrogatory, that he has no knowledge of the contents of this interrogatory, and does not believe the same to be true.

To the seventh interrogatory, that he has been informed, and believes it to be true, that the said Saunders made a written contract with the said Durant, a copy whereof is annexed to the said bill; and that the said Saunders did also agree with the said Durant that this respondent, the said Lawrence, and the said Saunders, would execute a bond to the said Durant, binding them to an agreement, the same in substance as contained in the said written memorandum, but this respondent hath no knowledge or belief of any other agreement whatsoever between the said Saunders and the said Durant. This respondent has been informed and believes, that the said Durant did execute and deliver a conditional deed conveying his title, whatever it was, in consequence of the aforesaid agreement of the said Saunders.

To the eighth interrogatory, that he has already answered the same.

To the ninth interrogatory, that he has already answered the same.

To the tenth interrogatory, that he has no knowledge thereof, saving so far as he has already answered.

To the eleventh interrogatory, that the said bond was not executed by this respondent, and he believes it was not executed by either of the obligees named therein.

To the twelfth interrogatory, that he knows not that anything has been paid to the said Durant by this respondent, or the said Lawrence and Saunders, or either of them.

To the thirteenth interrogatory, that the said Barker was employed by this respondent and the said Lawrence and Saunders at different times to buy for them some lands other than and different from the lands in the said bill mentioned, and that to the knowledge and belief of this respondent, the said Barker was in no way their agent in respect to the said last-mentioned lands. That this respondent and the said Lawrence and Saunders did procure the titles to lands in the town of Methuen, under an expectation that a corporation would be formed to which they could sell such lands; that such a corporation was afterwards created by the Legislature of

Massachusetts and called the Essex Company, and they did sell to the said company their said titles, including their title to the lands mentioned in the said bill, for a valuable consideration to them paid, and conveyed the same to the said Rand and Storrow as trustees for the said Essex Company.

To the fourteenth interrogatory, that he has already answered the same.

To the fifteenth interrogatory, that he has no personal knowledge thereof, but believes that the said deed was procured to be recorded by the said Saunders.

To the sixteenth interrogatory, that he has no personal knowledge thereof, but believes that the said Barker did execute a deed conveying his title, and that the same was made in consideration of a sum of money agreed to be paid to him, according to the condition in the said deed contained, and that the said deed was procured to be recorded by the said Saunders.

To the seventeenth interrogatory, that it is the same as the sixteenth, and he makes the same answer thereto.

To the eighteenth interrogatory, that he has no personal knowledge thereof, but believes the said Saunders did give notice to the said Durant that he elected not to take his title under the said deed and written memorandum.

To the nineteenth interrogatory, that he has no knowledge thereof.

To the twentieth interrogatory, that he has no knowledge thereof, save as he has before answered.

To the the twenty-first interrogatory, that as he has already declared a conveyance, embracing among others the title of this respondent and the said Lawrence and Saunders, was made to the said Rand and Storrow, but the date thereof this respondent cannot give; and as to any notice thereof to the complainant this respondent has no knowledge, and knows of no reason why any should have been given.

To the twenty-second interrogatory, that the said Durant and Barker did call on this respondent at Lowell, and, as he thinks, some time in April, 1845, and complained that this respondent had not executed the said bond, but not otherwise according to this respondent's recollection and belief.

To the twenty-third interrogatory, that he has no knowledge thereof.

To the twenty-fourth interrogatory, that this respondent hath no certain knowledge of any arrangement whatever between the said Durant and the Essex Company, or any one acting or assuming to act in its behalf; but he was informed by the said Lawrence, and believes it to be true, that some time in May, 1845, the said Durant called on the said Lawrence, and informed him that he had concluded to make no further claims to the said lands, but to leave it entirely to the generosity of the Essex Company to determine what

he should receive after the incumbrances should all be cleared off and a good title obtained; and that he would assist the company in getting in these incumbrances, and removing the embarrassments which surrounded the title, and when all was done, if the company got the property low, they should give him what they could afford to, and it was to be left to the said company to determine how much, or words to that effect. And this respondent has been informed and believes, that the said Lawrence did reply to the said Durant, in substance, that he thought the company would give him something, but gave him no assurances that he should receive any particular sum, or anything except at the pleasure of the company —and further this respondent knoweth not.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is charged by the said bill, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN NESMITH.

U. S. A. First Circuit,
District of Massachusetts:

This 26th September, A. D. 1848.

Personally appeared before me, the above-named John Nesmith, and made oath that the matters and things in the foregoing answer were true, so far as the same were stated on his own knowledge; and that so far as they were stated on the information of others, he believed them to be true.

EDW. G. LORING,
Com'r.

And thence this cause was continued to the October term, 1849, of this Court, and on the 3d day of May, A. D. 1850, the following amendment to the bill of complaint was filed in the cause, viz:

Circuit Court U. S.,
Mass. District:

Adolphus Durant
vs.
The Essex Company et al.

And now the complainant, by leave of Court, amends his bill by

striking out the name of Stephen Barker, who is named as one of the defendants therein, wherever the name of said Barker is therein inserted.

By S. BARTLETT,
His Solicitor.

Whereupon, the said bill was dismissed as *to said Barker*, with costs for said Barker, taxed at the sum of one hundred and seven dollars and ninety-two cents. And thence this cause was continued to the Oct. term, A. D. 1850, of this Court, and on the 15th day of said October, the bill, on motion, was dismissed by the Court as against Daniel Saunders, jr., with costs. And on the 10th day of March, A. D. 1851, the following replication of the compl't to the answer of the Essex Company was filed in Court, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & AL. } In Equity.

The replication of the said Durant to the answer of the Essex Company, one of the defendants.

This repliant, saving and reserving unto himself any and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By S. BARTLETT,
E. D. SOHIER,
J. P. HEALY,
His Solicitors.

And on the same day the following replication of the complainant to the answer of Daniel Saunders was filed in this cause, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District:

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & AL. } In Equity.

The replication of the said Durant to the answer of Daniel Saunders, one of the defendants.

This repliant, saving and reserving unto himself any and all

manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By J. P. HEALY,
Solicitor.
S. BARTLETT,
E. D. SOHIER.

And on the same day, the following replication of the compl't to the answer of Edward S. Rand was filed in this cause, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al. } In equity.

The replication of the said Durant to the answer of Edward S. Rand, one of the defendants.

This repliant, saving and reserving unto himself any and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By J. P. HEALY,
S. BARTLETT,
E. D. SOHIER,
Solicitors.

And on the same day, the following replication of the compl't to the answer of Charles S. Storrow was filed in the cause, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In equity.

The replication of the said Durant to the answer of Charles S. Storrow, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By J. P. HEALY,
S. BARTLETT,
E. D. SOHIER,
Solicitors.

And on the same day, the following replication of the compl't to the answer of Samuel Lawrence was filed in the cause, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In equity.

The replication of the said Durant to the answer of Samuel Lawrence, one of the defendants.

This repliant, saving and reserving unto himself any and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be certain, true, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied

unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By J. P. HEALY,
S. BARTLETT,
E. D. SOHIER,
Solicitors.

And on the same day, the following replication of the compl't to the answer of John Nesmith was filed in court, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In equity.

The replication of the said Durant to the answer of John Nesmith, one of the defendants.

This repliant, saving and reserving unto himself any and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By J. P. HEALY,
S. BARTLETT,
E. D. SOHIER,
Solicitors.

This cause was thence continued to the May Term, A. D. 1851, of this Court, when, to wit: on the 19th day of July, 1851, the respondents filed in the clerk's office a caveat against the issuing of a commission to take the deposition of Stephen Barker; and afterwards, to wit: August 4th, 1851, the following agreement was filed, viz:

145

U. S. CIRCUIT COURT,
Mass. Dist.

In Equity.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

It is agreed that the caveat filed by the defendants against the issuing of a commission to take testimony on the plaintiff's interrogatories shall be withdrawn, and the time for the taking of testimony extended to the 30th day of September next; and that the Essex Company have leave to amend its answer on or before the 6th August, for the purpose of putting more plainly in issue any facts tending to prove that the title formerly held by Stephen Barker was not available at law or in equity against the title formerly held by Joseph Foster; and if there is any outstanding claim for costs decreed, the same is hereby waived.

S. BARTLETT,
For Pl'tff.
W. H. GARDNER,
For Def'ts.

August 4, 1851.

And on the 6th day of said August, the following amended answer of the Essex Company was filed in Court, to wit:

CIRCUIT COURT U. S.,
Mass. District.

ADOLPHUS DURANT,
vs.
SAMUEL LAWRENCE, et al.

The amended answer of the Essex Company to the bill of complaint of Adolphus Durant.

These respondents, saving to themselves all benefit of exception to the said bill of complaint, for answer thereunto, or unto so much or such parts thereof as they are advised it is necessary or material for them to answer unto, answering, say: They have been informed, and believe it to be true, that the said complainant was formerly the owner of the lands in the said bill mentioned, with their appurtenances; and while so the owner he mortgaged the same at different times to sundry persons to secure the payment of divers sums of money, and these respondents crave leave to refer to the mortgage deeds and assignments thereof, or to duly attested

copies of the records thereof, when produced as part of this answer.

And these respondents have been further informed and believe, that on or about the twenty-ninth day of March, eighteen hundred and forty-three, the said Durant executed a deed which purported to convey the said lands, in fee, to one Jesse Sargent; and that the said Sargent did afterwards execute a certain deed which purported to convey the said lands to the said Barker, in fee-simple.

And on the twentieth day of October, eighteen hundred and forty-three, the said Durant, on his own petition, was decreed an insolvent, under the law of the State of Massachusetts, commonly called the insolvent law; and one Jacob Howe having been duly appointed his assignee, did sell, and by his deed bearing date the first day of June, in the year eighteen hundred and forty-four, did undertake to convey, in fee-simple, to one Joseph Foster the same equity of redemption of all the right, title, and interest of the said Durant in the said premises.

And these respondents, further answering, say, that as they are informed and believe, by a deed bearing date the nineteenth day of March, in the year eighteen hundred and forty-five, and duly acknowledged and recorded, the said Barker conveyed unto the said Lawrence, Saunders, and Nesmith, in fee-simple, all his right, title, and interest in the said premises, conditioned to be void if the said grantees, or their assigns, should not, within forty-three days from the date thereof, pay to the said Barker or his assigns the sum of one hundred and twenty-five dollars; and they are further informed and believe, and therefore aver, that the said condition having been complied with, the said Barker did thereupon, by a deed bearing date the twenty-sixth day of March, in the year eighteen hundred and forty-five, duly acknowledged and recorded, convey to the said Lawrence, Saunders, and Nesmith, in fee-simple absolute, all his right, title, and interest in and to the said premises.

And these respondents, further answering, say, that by a deed bearing date on the first day of April, in the year eighteen hundred and forty-five, and duly acknowledged and recorded, the said Lawrence, Saunders, and Nesmith did convey unto Charles S. Storrow and Edward S. Rand, in fee-simple, upon the trust to convey the same unto these respondents, the said lands in the said bill mentioned, together with other lands, for the valuable consideration of seventeen thousand nine hundred and ninety-two dollars and eighty-one cents, mentioned in the said deed, and for other valuable considerations to the said grantors paid.

And these respondents, further answering, say, that neither at the time of the said conveyance to the said Storrow and Rand, nor at the time of the payment of all or any part of the said consideration therefor to the said Lawrence, Nesmith, and Saunders, had these respondents, or, to the best of their knowledge and belief, had the said Storrow or the said Rand, any notice that the said

Barker at any time held the said premises upon any trust for the said Durant, or that the said Durant had any title whatsoever thereto, or that any fraud, deception, or undue influence, or trick of any kind, had been practised or attempted by any one upon the said Durant or the said Barker; or that any contract, agreement, or indenture, in any way touching the said premises, with them or either of them, had been violated or not conformed unto.

And these respondents, further answering, say, that they have been informed and believe, and therefore state, that sometime after the making of the said conveyance by the said Lawrence, Nesmith, and Saunders, to the said Storrow and Rand, in trust, as aforesaid, but the precise time these respondents cannot state, the said Storrow was informed, though he cannot now remember by whom, that the state of the mortgages on the said premises was such as to require immediate action; and that the said Durant had got into some difficulty with his creditors in some way connected with this property, and that he wanted his mortgages paid off, or to have the title replaced as it was before he had negotiated with Lawrence, Saunders, and Nesmith; but these respondents knew nothing of what deeds or bonds had been given, or what contracts had been made, by or with the said Durant, or what claims, real or pretended, he had or made to the said premises; but very soon afterwards, though the precise time the said Storrow does not remember, he only knows it was before any of the mortgages upon the said premises had been purchased, the said Storrow, as these respondents are informed, saw the said Durant, who informed him that he had been in Lowell and seen Mr. Lawrence, meaning, as the said Storrow understood, the said Samuel Lawrence, and had concluded with him to leave everything in the hands of these respondents, and that he would assist these respondents in obtaining the assignment of the mortgages upon the said premises, and clearing off all the incumbrances thereon, so as to make the title of these respondents perfect, and that these respondents should furnish all the money required; and when these respondents had got through and had obtained a perfect title, if they obtained it at a very low rate, they must do what was right and fair by him, and that it was to be left to these respondents to decide what they would so do for him.

And these respondents are further informed and believe, and therefore state, that the said Storrow did not know what, if any, equitable claims the said Durant had; nor did the said Storrow understand that the said Lawrence had any power to bind these respondents to any arrangement whatever. And these respondents further aver, that the said Lawrence had not any power to bind these respondents to any arrangements whatever; but inasmuch as the said Storrow had great confidence that whatever arrangement the said Lawrence had made was just and proper, and inasmuch as the arrangement as stated by the said Durant seemed to the said

Storrow to be unexceptionable, as it was expressly declared that it was to be left to these respondents themselves to decide what, if anything, was to be allowed to the said Durant, the said Storrow, in behalf of these respondents, assented thereto, and afterwards assignments of sundry mortgages were obtained from the holders thereof unto these respondents.

And these respondents, further answering, say, that as they are informed and believe, the said Storrow, in taking the said assignments, and in paying the considerations therefor, which in all cases were the full amounts secured by the said mortgages, acted upon the understanding and belief that he was proceeding to carry into effect what had previously been proposed, as aforesaid, by the said Durant, and assented to by the said Storrow; and he was confirmed in this belief by the fact that the said Durant did give some personal assistance and aid to procure some of the said assignments to be made, and seemed to the said Storrow to be thus acting in conformity with his proposal aforesaid.

And these respondents, further answering, say, that since the conveyance of the said premises to the said Storrow and Rand, in behalf of these respondents, the value of the said premises has been very greatly enhanced by reason of the expenditure by these respondents of great sums of money in the vicinity thereof, and the creation, by these respondents, and by persons claiming under them, of a great amount of water-power, and the erection of mills, machine-shops, and other structures, and the collection of a large population in that vicinity.

And these respondents, further answering, say, that after the said assignments had been obtained, and while the said Storrow and the said Rand were endeavoring to obtain assignments of the remainder of the said mortgages, the said Storrow was informed that one Robert Farley had obtained the title to the remainder of the said mortgages, and especially to a certain mortgage made by the said Durant, under which possession, to make a foreclosure, was taken on the sixth day of July, in the year eighteen hundred and forty-two, and the right of redeeming which last-mentioned mortgage would of course expire on the sixth day of July, in the year eighteen hundred and forty-five.

And these respondents are further informed and believe, and therefore say, that the said Storrow was informed that the title to the right of redeming the said premises which had been conveyed, or attempted to be conveyed, by the said Howe, as the assignee in insolvency of the said Durant, to the said Joseph Foster, had also come to the said Farley, and that he claimed to be the lawful owner of the right of redeeming the said premises from all the mortgages thereon, and denied that the title of these respondents, to whom the said Storrow and the said Rand had them conveyed, was valid, upon the ground that the said deed from the said Durant to the said Sargent was void under the insolvent laws of Massachusetts, and

that the said Barker knew that the same was void when the said Sargent conveyed to him as aforesaid.

And these respondents, further answering, say, that in order to effect the redemption of the mortgages held by the said Farley, as aforesaid, and one of which otherwise would be very soon foreclosed, these respondents did file two bills in equity in the Supreme Judicial Court of the State of Massachusetts, wherein the said Farley and Foster were made defendants, praying to redeem the mortgages held by the said Farley, as aforesaid; and unto the said bills the said Farley and Foster did answer, and among other things did aver, that the said deed from the said Durant to the said Sargent was made with intent to defeat and defraud the creditors of the said Durant, and that for that and other causes the same was void as against the said Howe, as his assignee, and that the said Howe had lawfully sold and conveyed the said equity of redemption unto the said Foster, and the said Foster had lawfully sold and conveyed the same to the said Farley.

And the said Farley and Foster did further aver, that the said Durant made application to the master in chancery, before whom his proceedings in insolvency were pending, for a discharge; that the said Foster opposed his said application, and showed for cause that the said Durant had concealed property with intent to defraud his creditors; that the master refused to grant the discharge; that the said Durant appealed from the said decision of the master to the Supreme Judicial Court aforesaid; that in this last-mentioned court, the appeal being heard, the only case shown by the said Foster for affirming the said decision of the master was, that the said deed from the said Durant to the said Sargent was faudulent as against his creditors, and that for this cause, upon the said hearing, the said decision of the master was affirmed. And so the said Farley claimed to be the sole owner of the said right of redemption, and denied the title of these respondents thereto.

And these respondents, further answering, say, that the said Storrow, in their behalf, consulted the learned counsel employed by the respondents to prosecute the said suit against the said Farley, respecting the probabilities of the said Farley's succeeding in establishing his aforesaid title, and whether or no it was expedient and proper for these respondents to purchase his said title; and being strongly advised so to do, the said Storrow, in behalf of these respondents, did purchase the aforesaid title of the said Farley, and did pay him therefor the sum of . dollars, and the said title was conveyed to these respondents.

And these respondents, further answering, say, that as they are informed and believe, the said Durant was informed of the institution and prosecution of the said suit against the said Farley and Foster, and knew that in the said suit these respondents claimed to be the owners of the said equity of redemption under and by virtue of the said deeds from the said Durant to Sargent, and from

Sargent to Barker, and from Barker to Lawrence, Nesmith, and Saunders, and from these last to Storrow and Rand, and from these last to these respondents, yet the said Durant not only was silent as to any defect in the said title of these respondents, and as to any fraud committed or attempted towards him, and as to any trust in his favor touching the said premises, but, as these respondents have been informed, and believe to be true, he offered himself as a witness to support the title of these respondents, and being questioned by B. R. Curtis, esquire, the counsel of these respondents in the said suit, as to his interest, in order to ascertain whether he was competent in point of law to testify in the said cause, he declared, in substance, that he had no claim to the said property; that he had no contract with any one which would give him a right to anything, however the said suit might be terminated; and that, although he expected to receive something from these respondents if they obtained a clear title to the said premises, this expectation was not founded on any contract, and that he relied entirely on the generosity of the said Lawrence.

And these respondents, further declare, that throughout all the proceedings aforesaid, they acted on the belief and in the faith that the said Durant neither had, nor pretended to have, any right, title, or interest in the said premises, and that it was entirely in the discretion of these respondents, what, if anything, they would give to the said Durant, after their title should be found complete and perfect.

And these respondents, further answering, say, that after they had acquired the title of the said Farley, as aforesaid, and after all incumbrances and expenses had been paid, the said Storrow, in behalf of these respondents, being desirous to do in good faith all that the said Durant could reasonably expect from these respondents, made a computation, ascertained what sum of money the said premises had cost these respondents, and found it was upwards of twenty-six thousand dollars; and inasmuch as the sum of twenty-seven thousand dollars was the highest sum which the said Storrow had ever heard the said Durant mention as the value of the said premises, the said Storrow, in behalf of these respondents, did offer to give to the said Durant the sum of one thousand dollars; and this offer being rejected by the said Durant, the said Storrow, in behalf of these respondents, and having had conference with the said Lawrence upon the subject, did thereupon offer to give to the said Durant the sum of seven thousand dollars, provided that the wife of the said Durant would release her possibility of dower in the said premises, which offer the said Durant rejected; and these respondents say, that the said Storrow made the offer last aforesaid in their behalf, solely on account of the expectations which the said Durant had had and expressed, as aforesaid, that he should receive something from these respondents when the title to the premises was clear, and for the purpose of offering to do as much as any one

could expect to be done, and with the hope that the said Durant would be entirely content and satisfied, and as a liberal exercise of the discretion of these respondents, upon which alone the said Durant had relied as above stated, and not because these respondents believed that the said Durant had any claim whatever which could be recognized by any Court, either upon the said premises or upon these respondents. And these respondents further say, that neither then, nor at any other time, had they authorized the said Storrow to treat and settle with the said Durant, except upon the basis of a free gift at the discretion of these respondents.

And these respondents, further answering to the specific interrogatories to them proposed, say that,

To the said first, second, and third interrogatories they have already answered.

To the twelfth interrogatory they answer, that they believe that the said Lawrence, Nesmith, and Saunders did not pay to the said Durant any part of the said sum of twenty-seven thousand dollars, inasmuch as they had elected not to perform the condition of the said Durant's deed.

To the thirteenth interrogatory they answer, that they believe that the said Barker was employed by the said Lawrence, Saunders, and Nesmith to negotiate for some titles to estates, but these respondents have no personal knowledge thereof, and no knowledge of the particulars of such employment; that the said Lawrence, Nesmith, and Saunders did procure the titles to the lands in question, and many other lands, with the purpose of selling them to a corporation which they expected would be created, and which was afterwards created, viz: these respondents; and that the said Lawrence, Saunders, and Nesmith did afterwards sell and convey the said lands through the said Storrow and the said Rand, as trustees, to these respondents, and that these respondents did pay them therefor the several sums which they had paid, and the sum of thirty thousand dollars in addition thereto. And the said Lawrence, Saunders, and Nesmith did subscribe for and take stock of these respondents when this corporation was organized, and did become members thereof, together with a great number of other persons, the whole capital stock of these respondents being the sum of one million of dollars, all but eight or ten thousand dollars of which is actually paid in.

To the fourteenth interrogatory they answer, that the said Storrow and the said Rand were so far the agents of these respondents as to receive the said conveyance in trust for these respondents, as aforesaid.

To the fifteenth interrogatory they answer, that they believe that the said deeds were recorded, but they know not by whom nor when.

To the sixteenth and seventeenth interrogatories they answer,

that, according to the best of their knowledge, information, and belief, they have already answered the same.

To the nineteenth interrogatory they answer, that they know not, and have not been informed, and cannot state, whether or not the facts therein inquired about existed or not.

To the twenty-first, twenty-fourth, and twenty-fifth interrogatories they say, that they have above answered the same, save that they know not of any notice thereof being given to the said Durant, except the notice to be implied from the recording thereof.

To the twenty-sixth interrogatory they answer, that they have already answered that the said conveyance from the said Storrow and Rand to the respondents was made on the seventh day of June, in the year eighteen hundred and forty-five; but they deny that these respondents, or to the best of their knowledge and belief, that the said Storrow or the said Rand, had notice of any claims of the said Durant, other than the expectation which he had that he might receive something in one event from these respondents, by way of gratuity, as is above set forth by these respondents in a former part of their answer.

To the twenty-seventh they answer, that they did sue out such a writ, but it was in the year eighteen hundred and forty-seven, and not in the year eighteen hundred and forty-five.

And these respondents, further answering, say, that they deny that there was, at any time, any written agreement or any memorandum in writing whereby any contract between these respondents and the said Durant, or between the said Durant and the said Barker, respecting the said lands, was evidenced, or any trust whatsoever relating thereto was declared. And these respondents say, that in and by the fifty-ninth chapter and thirtieth section of the Revised Statutes, it is enacted, that "No trust concerning lands, excepting such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing, signed by the party creating or declaring the same, or by his attorney." And in and by the fifty-ninth chapter and twenty-ninth section of the same statutes, it is further enacted, "All estates or interests in lands created or conveyed without any instrument in writing signed by the grantor, or by his attorney, shall have the force and effect of estates at will only; and no estate or interest in lands shall be assigned, granted, or surrendered, unless by a writing signed as aforesaid, or by the operation of law." And these respondents plead the said statutes, and in answer to so much of the said bill as touches these respondents, or their alleged premises, agreements, and doings in the premises, or any title of the complainant to the said lands, they rely thereon as a bar.

And these respondents further say, that in and by the fifty-ninth chapter and the thirty-first section of the same statutes, it is further enacted, "No trust concerning lands, whether implied by law or created or declared by the parties, shall defeat the title of a pur-

chaser for a valuable consideration, and without notice of the trust." And these respondents, alleging that they are purchasers of the said premises for a valuable consideration, and without notice of the trust pretended by the said complainant, plead the said statute, and in answer to the said bill of complaint, or to so much thereof as touches these respondents, or their alleged premises, agreements, and doings in the premises, or any agreements of the said Barker, or any title of the complainant to the said lands, they rely thereon as a bar.

And these respondents, not waiving but relying upon the said statutes, and other matter aforesaid, as a complete defence, further answering, say, that although neither the said "Essex Company," nor the said Storrow and Rand, or either of them, nor the said Saunders, Lawrence, and Nesmith, or either of them, had any notice or suspicion of the facts alleged by said Farley and others, as above stated, in derogation of the title of said Barker, as derived from said Sargent, until long after the said Barker's title had, by the several mesne conveyances above mentioned, become vested in said Essex Company, but, on the contrary, the said Essex Company, and the said Storrow and Rand, and the said Saunders, Nesmith, and Lawrence, upon the representations made to them respectively at the time of their respective negotiations and dealings relative to the purchase and transmission to the said Essex Company of the said title, acted upon the faith that the same was a true and perfect title at law and in equity to all the estate in the premises whereof the complainant was seized at the date of his said recorded deed, purporting to convey the same to said Sargent for the consideration of six thousand dollars by him paid; yet these respondents, being otherwise informed by the allegations of said Farley and others in the suits before mentioned, and by statements since made by other persons, but having no personal knowledge in the premises, now aver, for the purpose of putting all material facts in issue and submitting the evidence thereof to the court, that the complainant, at the time of the making of his said deed to Sargent, was unable to pay his just debts, and being fully aware thereof was desirous to avoid and to obtain a discharge therefrom under the insolvent laws of Massachusetts; and that his said deed was not made upon the receipt of any such valuable consideration as is therein acknowledged, nor any other valuable consideration to him paid, and was not designed to convey to said Sargent any such absolute estate in the premises as it purports to convey, nor any estate not subject to the control of the complainant, but that the said deed was made upon no other pecuniary consideration than a very small amount of prior indebtedness to said Sargent, for which the property mentioned in said deed was to stand as collateral security only; and that the residue of the consideration was an agreement, in writing, not recorded, whereby the said Sargent promised, when the said complainant should request him so to do, to lease or sell the said property

in such way and manner and at such time as the complainant should direct; and after indemnifying himself for his costs and expenses, if any, and deducting the amount of any debt that might be due to him from the complainant, or of any liability that might be incurred on his account, to pay over the whole residue of the proceeds of such lease or sale to the complainant upon demand.

And these respondents submit to the honorable court that the complainant, notwithstanding said apparent conveyance, continued in respect to his creditors to be the equitable owner of the property so apparently conveyed, and aver that the said deed was made in contemplation of insolvency and upon a secret trust, and for the purpose of giving a preference to said Sargent over the other creditors of the complainant, and of concealing the residue of said property from such creditors, with a view to hinder, delay, and defeat them; and that the complainant intended to conceal and did conceal his said equitable title from the other creditors, and that the said conveyance was fraudulent and void in respect to them, as a conveyance made to hinder, delay, and defeat them, and also fraudulent and void under the insolvent laws of Massachusetts, in respect to such creditors as should prove their claims pursuant to said laws, as a conveyance made and intended to give a preference to said Sargent.

That afterwards, on or about the eleventh day of September, 1843, the complainant, in order more effectually to conceal his interest in said property, and to mislead his other creditors into a belief that his said deed was a bona fide and absolute conveyance to the said Sargent of the property therein described, caused a colorable and fraudulent sale of the same to be made in the name of said Sargent, and as the property of the said Sargent, through the form of a public auction, and procured the said Barker to make the said sale as an auctioneer, and to buy in the property; and that the said Barker did act as auctioneer, and offer the said property for sale to the highest bidder, and did bid it off to himself, as the nominal purchaser thereof, for the sum of fifteen dollars; but that in fact no contract of sale was made between said Barker and said Sargent, nor was there any memorandum thereof in writing, nor was any money paid by said Barker to said Sargent or to the complainant, nor was any deed or other writing delivered by said Sargent in pursuance of such sale or otherwise, until sometime within the month of January, 1845, when the said deed was first made and delivered to the said Barker, on the request of the complainant, in consideration of the said sum of fifteen dollars then first paid to the said Sargent, the said complainant meanwhile having continued to use and occupy the premises as his own, without paying or contracting to pay any rent therefor, either to the said Sargent or to the said Barker. That the complainant, on or about the twentieth day of October, 1848, filed his before-mentioned petition under the insolvent laws of Massachusetts, and thereupon such proceedings were had that all the estate and property of the said

insolvent debtor were transferred to and became vested in an assignee duly appointed to administer thereon; and on or about the seventeenth day of January, 1844, the complainant concealing the circumstances above stated respecting said parcels of land, and pretending that his said deed to Sargent was an absolute and bona fide conveyance of all his estate in the premises therein described, applied for a certificate of discharge from his debts; but being opposed by said Foster, a creditor who had duly proved his debt, upon the ground of a fraudulent concealment of property by means of his said deed to Sargent, and otherwise, as above stated, a hearing was had both before a master in chancery and upon appeal before one of the justices of the Supreme Judicial Court of Massachusetts, wherein it was in effect adjudged that his said deed was fraudulent and void, and that by reason thereof, and of his concealment of property in manner aforesaid, he was not entitled to the certificate prayed for, and the same was refused; that thereafter, on or about the first day of June, 1844, the assignee appointed to administer upon the estate of said insolvent debtor made sale at public auction, according to law, of all the right, title, interest, and estate of the complainant in the said several parcels of land, and the said Foster being the highest bidder thereat, the same were sold to him for the sum of six hundred dollars, and he thereupon signed the conditions of sale, and became bound, in writing, to take and pay for the said property at the said auction price on delivery of a deed of the same from said assignee, and upon his subsequent payment of the said sum, the deed above mentioned, from said Howe, assignee, to said Foster, was made and delivered; that the said Barker, at the time of the said last-mentioned auction sale, although he had no title in law or in equity to the said premises, nor any right to call for a deed of the same by virtue of any contract then subsisting between him and the said Sargent, claimed, nevertheless, by the request of the complainant, to be the owner of the property, and in concert with him endeavored to prevent other persons from purchasing the title offered for sale by said assignee. That at the time of the delivery of said deed from Sargent to Barker, and of his payment to said Sargent of the sum of fifteen dollars therefor, he, the said Barker, was fully informed, and had positive notice of all and singular the matters and proceedings aforesaid, relating to the titles of the said Sargent and of the said Foster, respectively, preceding the actual delivery to said Foster of the deed from said Howe, yet the said Barker did not communicate the same, nor any of them, (except the recorded deed of the complainant to Sargent, and the deed from Sargent to himself,) to the said Saunders, Lawrence, and Nesmith, or either of them, at the time of his negotiations with them for a sale of his title as derived under the said recorded deed of the complainant to said Sargent, and the deed from said Sargent to him, but held himself out as the true owner of the legal title, and of the whole right in equity to redeem the said parcels of land from the

existing mortgages by virtue of the said deeds, and he exhibited to said Saunders the said deed from Sargent, which was still unrecorded, as the evidence thereof, and the complainant stood by and encouraged the said Saunders to purchase the title of said Barker, and requested the said Barker to make a deed thereof to the said Saunders, Lawrence, and Nesmith, and made his own conditional deed before mentioned, without intimating the existence of any adverse title or claim, or making known any of the facts and circumstances aforesaid concerning the same, all of which were well known to the said complainant.

And these respondents submit to this honorable court, that the said Barker, under the circumstances above stated, was not a bona fide purchaser of the recorded title of said Sargent, without notice of the secret agreement between said Sargent and the complainant, nor without notice that the said title was fraudulent and void as against the creditors of the complainant, and especially as against the said Foster; and the said Barker did not acquire by the deed of said Sargent to him any title at law or in equity as against the said creditors, nor especially against the said Foster, but that all the estate whereof the complainant had formerly been seized, subject to the existing mortgages, passed by the above-mentioned deed of said Howe, the assignee, to said Foster, and from the said Foster, by his said deed, to said Farley, and from the said Farley, by his said deed, to the Essex Company; and that neither the said Barker, nor any person claiming under him, was at any time seized, by virtue of his said title, or otherwise, as against the said Foster, or any person legally claiming under the said Foster, of any legal estate in the premises, whereby any such equitable right, interest, or claim, as the claimant pretends in his said bill, could have been created or preserved by means of any such contracts, agreements, or arrangements between him and the said Barker, or between him and either of the defendants to this bill, if any such there were, as are therein set forth; but that all such contracts, agreements, and arrangements, intended by the complainant to create, continue, preserve, or secure to himself some beneficial interest in the said property not to be reached by his creditors, were, as well as the supposed legal estate of said Barker whereon they were founded, absolutely void, and of no avail against the title of said Foster, afterwards vested by the mesne conveyances aforesaid in said Essex Company.

And these respondents further submit to this honorable court, that either the said Foster, or the said Farley as his assignee, and not either the complainant or the said Barker, was, at the time of the transactions aforesaid, respecting the sale and purchase of said Barker's title, the true owner of the right in equity to redeem the said parcels of land from the mortgage before mentioned as about to be foreclosed, and which afterwards became foreclosed in the hands of said Farley; and that by such foreclosure a new and dis-

tinct title was acquired by said Farley, which was afterwards conveyed to said Essex Company, and against which the pretended equities of the complainant, founded upon the alleged title of said Barker, and on an alleged contract with said Barker respecting it, was absolutely void.

And these respondents insist, that under the circumstances above stated, the attempt of the complainant to obtain some large sum of money for a release of his pretended equitable rights and interests under the said Barker, and his attempt to induce these respondents to advance other large sums of money for the payment of his mortgage debts, on the faith of the title so derived, to these respondents from said Barker, were attempted frauds upon these respondents, and that the complainant cannot in equity and good conscience set up by any claim to relief against these respondents, founded upon an alleged interest under the supposed title of said Barker, nor upon any promise made or encouragement given, if any there were, by the said Saunders, Lawrence, Nesmith, Rand, Storrow, or either of them, under the representations made to them, respectively, concerning the title of the said Barker, and concerning the alleged equitable rights of the complainant therein, while they were kept in ignorance of the better title then held either by the said Foster or the said Farley, and of the facts and circumstances known to and concealed by the complainant, respecting the fraudulent agreement by which he had conveyed to the said Sargent, and respecting the notice thereof to said Barker, before any transfer to him of the apparent title held by said Sargent.

And these respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of these respondents; all which matters and things these respondents are ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

CHAS. S. STORROW,
Treasurer of Essex Company.
[L. S.]

And thence, this cause was continued to the October term, 1851, of this Court, when the following entry was made upon the docket, viz: "Mr. Justice Curtis, having been of counsel, does not sit in this cause." And thence the same was continued to the October term, 1853, of this Court, when, to wit: March 4th, 1854, the following motion was filed in the cause, viz:

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts:

October T., 1853.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & AL. } In Equity.

And now, Daniel Saunders, one of the defendents, comes and moves the Court that he may be allowed to amend his answer in this case, by answering the interrogatories in the complainant's bill, numbered 1 to 3, inclusive, 6 to 9, inclusive, and 12 to 25, inclusive, which by said bill he is required to answer, and which he has omitted to answer by mistake.

March 4, 1854.

By C. G. RIPLEY,
His Solicitor.

And now, to wit, March 4, 1854, after hearing the parties, by their counsel, on the motion aforesaid, the Court order, that said Saunders have leave to amend his answer; the defendents thereupon to pay the plaintiff his costs for travel and attendance from the time when his former answer was filed to this day.

And on the sixth day of March, 1854, the following amended answer of Daniel Saunders was filed in this Court, to wit:

CIRCUIT COURT OF THE U. S.,
District of Massachusetts:

In Equity.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & ALS.

The amended answer of Daniel Saunders to the bill of complaint of Adolphus Durant.

This respondent, by leave of Court, amends his answer already filed in this cause, by answering the interrogatories, which in and by said bill he is required to answer, as follows, viz:

To the first interrogatory, that he has no certain knowledge, but believes that the complainant was at one time the owner of said premises, and in possession of the same.

To the second interrogatory, that he has no certain knowledge thereof, but believes that said Durant did mortgage said premises to various persons to a considerable amount.

To the third interrogatory, that he has been informed and believes, that said Durant did make a deed purporting to convey his interest in said premises to said Sargent, bearing date March 29th 1843, and that said Sargeant afterwards made a deed, bearing date Sept. 11th, 1843, which purported to convey the same to said Barker.

To the sixth interrogatory, that he did apply to said Barker to purchase said lands, but it was before said Barker had made said conveyance to said Thorndike. That this respondent first applied in December, 1844, or perhaps it might have been as late as January, 1845. That said Barker did not, at that time, inform him of any agreement or arrangement whatever with said Durant respecting said lands, but represented himself to be the sole owner of the equity of redemption therein, and negotiated as such respecting a sale thereof to this respondent and his associates, and he thinks that at this, or it may have been at a subsequent interview, said Barker showed to this respondent his deed from Sargent. That this respondent had at least two and perhaps three interviews with said Barker, respecting such sale, prior to the mention of any conveyance to or treaty with said Thorndike; and at each of said interviews said Barker represented himself to be the sole owner of the right to redeem the premises from the mortgages thereon, and expressed himself to be willing and desirous to sell the same at something above the amount of these incumbrances, which he represented as amounting to a large sum, but he did not definitely name any exact sum for which he would sell his title at either of these interviews. That at the third or fourth interview, said Barker informed this respondent that, since the last interview, he had entered into a negotiation with said Thorndike, respecting a sale of said estate to him, and had made a deed to said Thorndike, but that he supposed said deed was not on record, and that the matter lay so that said negotiation might possibly be put an end to and the deed be got back, and that said Barker would endeavor to effect this if this respondent desired him to do so; and that if successful, the said Barker might then sell the said property to this respondent, if they could agree upon the price; that this respondent expressed surprise at said Barker's conduct in giving a deed of said estate to said Thorndike while this respondent was negotiating therefor, and desired said Barker to get back said deed and have the matter put back where it was before; that said Barker did not, at said interview or at any other time, inform this respondent that said deed was made in pursuance of any agreement with or obligation to said Durant, or that said Durant had anything to do therewith, or with the premises, except that he was occupying them as a tenant at will; nor did said Barker at any time inform this respondent of any such agreement or arrangement existing between himself and Durant, or of any such obligation on said Barker's part to said Durant as is inquired of, or of any other agreements or arrange-

ments whatever between them, except as aforesaid; and also that at some interview, he cannot remember which, he only knows that it was not at any of the earlier interviews, said Barker informed him that he had employed said Durant to assist him in selling the estate, as his acquaintance among paper-makers might be of use therein, and that he had promised to give said Durant therefor all he could sell said estate for over some sum which he named, but which this respondent does not now recollect. That said respondent did not request said Barker to apply to said Durant to get said deed back from said Thorndike and rescind said bargain, if any had been made, but on the contrary requested said Barker himself to apply to said Thorndike, inasmuch as throughout the whole negotiations the respondent looked to said Barker as the principal with whom he was dealing, and in especial, to the best of this respondent's present recollection and belief, had then no knowledge that said Durant had any connection with whatever negotiation had been made with said Thorndike, nor any reason to suppose that he had, unless as the agent of said Barker, after the aforesaid information received from said Barker. And this respondent has no knowledge or information, save by said bill, whether or not said Barker did in fact make any application to said Durant to get back from Thorndike the said deed, nor whether or not said Durant did agree with said Barker to negotiate with this respondent and his associates for a sale of said lands: he only knows that no such application was made to said Durant, and no such agreement made with him by said Barker, at the request of this respondent.

To the seventh interrogatory, that at his next interview with said Barker, said Barker informed this respondent that he had got said deed back from said Thorndike, and was ready to negotiate with this respondent, and also suggested that this respondent had better negotiate at the same time with said Durant also for his wife's dower, and for the further reason that there was a small part of the premises, on the north side of Spicket river, which was not fully covered by the said Sargent's deed to Barker, and which Durant claimed to own, and said Barker also suggested, and for the first time, as this respondent, according to his present recollection, believes, as a further reason, why it would be proper to take said Durant into the negotiation, that he had spoken, as is hereinbefore mentioned, to said Durant to assist him in selling said estate, and had promised him as aforesaid; but this respondent expressly denies, that said Barker then, or at any other time, ever gave this respondent to understand that said Barker was therefore bound to leave the selling of said state to said Durant, except at his own will and pleasure, or that he had in any degree limited or parted with his right as owner to sell his own title, as derived from said Sargent, when or how he liked, without consulting said Durant or any other person; he only gave this respondent the impression that, as matter of policy, it might be expedient for this respondent

and his associates to have a deed from Durant and wife, in addition to a deed from said Barker, in order to clear off her claim of dower, and Durant's claim to the small piece of land on the north side of the Spicket river, not covered by said Durant's deed to Sargent, and the further impression that in consequence of his having spoken to Durant to assist him about a sale, as aforesaid, he perferred, out of courtesy to Durant, that this respondent should talk and negotiate with said Durant as well as with said Barker concerning their respective titles and claims. That this respondent thereupon had one or more interviews with said Durant, at the house of said Barker, and also at the house of said Durant, and agreed to take from him a conditional deed, purporting to convey the said land with his wife's release of dower, and also the machinery in the mills, to be executed by said Durant and his wife, and delivered to this respondent and said Lawrence and Nesmith, and that this respondent and said Lawrence and Nesmith should execute and deliver to said Durant a bond conditioned to pay Durant the sum of $27,000, deducting the mortgages and other incumbrances on the property, including the said machinery, and all necessary expenses incurred in clearing the title and getting up said mortgages and incumbrances, provided they should elect to perform the condition of said conditional deed; and that afterwards, in performance of said agreement, said conditional deed was executed and delivered by said Durant and wife, and the respondent wrote and delivered said memorandum.

But this respondent expressly denies that it was ever understood or believed by him, that said Durant had any right, title, or interest, legal or equitable, unless as a tenant at will, in said property conveyed to said Barker by said deed of said Sargent, but on the contrary this respondent understood and believed, from the information of said Barker, and was never otherwise informed by him, that he, said Barker, was the true owner of said property; and throughout the respondent's negotiations with said Barker for his said conditional deed, it was distinctly understood between this respondent and Barker and Durant, that Barker was to sell to this respondent the equity of redemption held by him in said land, for a fixed sum, being one hundred dollars or thereabout, and that the said sum of twenty-seven thousand dollars spoken of as a sum to be paid to said Durant, if they should elect to take his title, by performing the condition of said deed, and after first deducting therefrom the amount of all incumbrances, was exclusive of said sum of one hundred dollars or thereabouts, for which said Barker was to convey to this respondent his title, under the deed of said Sargent.

To the eighth interrogatory, that it was agreed that this respondent should, if possible, replace said memorandum by a formal instrument, to be executed by said Lawrence and by said Nesmith, as well as by this respondent, of the tenor of the bond, a copy whereof is annexed.

To the ninth interrogatory, that he denies that any such agreement as is required of was made by this respondent with said Durant or said Barker.

To the tenth interrogatory, that he has answered this interrogatory in his former answer.

To the eleventh interrogatory, that he has answered this interogatory in his former answer.

To the twelfth interrogatory, that he knows not that any such payment has been made.

To the thirteenth interrogatory, that the said Barker was employed by this respondent, at different times, to buy some lands other and different from the lands in said bill mentioned, and that said Barker was in know way his agent in respect to said last-mentioned lands. That from time to time, during a period of nearly two years before the date of said Durant's conditional deed, this respondent, and the said Lawrence and Nesmith, with some other persons, forming a private association called the "Water Power Association," did procure the control of titles to lands and water privileges, in the town of Methuen, and take deeds and bonds thereof running either to this respondent and said Lawrence and Nesmith, or to this respondent individually, but in fact in trust for the said "Water Power Association," and that said titles were obtained under an expectation that at some time a corporation would be formed for manufacturing purposes, by suitable persons, with sufficient capital therefor, and that in such event, the members of said Water Power Association might sell the said lands and water privileges at a profit to such corporation. That a corporation was afterwards created by the Legislature of Massachusetts, called the "Essex Company."

That Abbott Lawrence, John A. Lowell, and other citizens of Boston, not members of said Water Power Association, opened subscription papers, procured the capital stock of said company to be taken up, and subscribed themselves nearly one million of dollars toward the same, and this respondent being applied to so to do, subscribed, or authorized to be subscribed for him, the sum of $20,000 towards the said capital stock, and this respondent believes that said Lawrence and Nesmith also subscribed thereto, and became stockholders therein, but knows not to what extent; and at or about the time of the opening of this subscription, this respondent, together with the said Nesmith and Samuel Lawrence, representing and acting for the said "Water Power Asssociation," did negotiate and agree with said Abbot Lawrence and John A. Lowell for a sale to said "Essex Company" of all the lands and water privileges and rights so purchased or secured, by or for the said Water Power Association, in consideration of the payment of the actual cost of said purchases to said "Water Power Association," including all expenses of agency and other incidental expenses and liabilities, all of which payments and liabilities were to be paid and borne by said

Essex Company, and the further consideration of $30,000 over and above the said cost and expenses and liabilities, to be paid by said Essex Company to said Water Power Association, as their profit upon said sale; and this respondent, together with said Samuel Lawrence and said Nesmith, did thereupon, in pursuance of said agreement, sell to said Essex Company all the titles acquired and held by them for said Water Power Association, including their titles to the lands mentioned in this bill; and they conveyed the same to said Rand and Storrow, as trustees of said Essex Company, on or about April 1st, 1845, for the valuable consideration aforesaid to them paid, viz, the amount actually advanced by the respective members of said association in the business thereof, and the sum of thirty thousand dollars over and above the actual cost of said lands to said association, including their expenses of agency, which sum was ratably divided among the members of said Water Power Association, according to their interest respectively.

To the fourteenth interrogatory, that he has no certain knowledge thereof, but believes that said Rand and Storrow were so far agents of said Essex Company as to take said conveyances in trust for said corporation, but not otherwise.

To the fifteenth interrogatory, that said deed was recorded, but this respondent does not recollect and cannot now say by whom. No notice was given to Durant thereof, to the knowledge of this respondent, and this respondent knows of no reason why any such notice should have been given.

To the sixteenth interrogatory, that this respondent agreed with said Barker for the sale of his title to said lands for the sum of one hundred and twenty-five dollars, or thereabouts, according to this respondent's present recollection and belief, and took a conditional deed thereof, to be made absolute on the payment of said sum within a certain time. That whether this was on the nineteenth day of March or not this respondent does not recollect, he only knows it was on the morning of the day following the evening on which this respondent received said Durant's conditional deed, and that the transaction was closed at the house of said Barker; and he believes that said Durant was not present at the time of the concluding of the said agreement, or of the delivery of said Barker's deed, which deed was thereafter duly recorded in the said registry of deeds; that no representations, statements, or means were used to induce said Barker to give said conditional deed, other than the agreement of this respondent to give the said sum of one hundred and twenty-five dollars, in case he should elect to take said title. That said Durant was well aware at the time he made and delivered his said conditional deed, that this respondent intended, on the next day, to follow up and conclude his negotiation with said Barker for his said title, and that it was solely on account of the lateness of the hour, that this respondent postponed such negotiation till the next day. That subsequently, said Barker, upon payment

to him of the said $125, made and delivered to said respondent, and said Lawrence and Nesmith, an absolute deed of said premises, which was also recorded, but this respondent does not now recollect the date of delivery or record; that no representations, or statements, or means whatever, were used to induce said Barker to give said deed, so far as this respondent knows or believes, except the payment to him of the sum of money stipulated to be paid by the terms of said conditional deed.

To the seventeenth interrogatory, that he has already answered the same.

To the eighteenth interrogatory, that he gave notice to said Durant of the election of said Lawrence, Nesmith, and himself, not to take said Durant's title on or before the expiration of the time limited by said memorandum; but this respondent does not now recollect what was the date of such notice, further than is above stated.

To the nineteenth interrogatory, that he cannot state, having no distinct recollection as to the date inquired of; but he believes the said deed was recorded very soon after it was received.

To the twentieth interrogatory, that he has already answered the same, except as to the date, which this respondent does not recollect.

To the twenty-first interrogatory, that such conveyance was made, as this respondent has already stated, and that no notice thereof, to this respondent's knowledge, was given to said Durant, and this respondent knows not why any such should have been given.

To the twenty-second interrogatory, that said Barker and Durant did not call on this respondent as inquired of, but this respondent was casually present in said Nesmith's office at Lowell, at some time in April, 1845, when said Durant and Barker called on said Nesmith, and expostulated with said Nesmith, in regard to said Nesmith's not having executed said bond, and not otherwise, so far as this respondent recollects; but this respondent does not recollect what they said in particular, nor that he was appealed to by either party during the conversation, or took any part therein.

To the twenty-third interrogatory, that he knows nothing of the matters inquired of.

To the twenty-fourth and twenty-fifth interrogatories, that he has had no dealings or intercourse with said Durant since said conveyance, and knows nothing of what has since been done or agreed by any other persons in regard to the matters inquired of.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed,

and avoided or denied, is true, to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL SAUNDERS.

CIRCUIT COURT OF UNITED STATES,
District of Massachusetts.

Nov. 16, 1853.

Personally appeared before me the above-named Daniel Saunders, and made oath that the statements made in the foregoing answer by him signed, as of his own knowledge, were true; those made upon the information of others, he believes to be true.

Before me,

EDW. G. LORING,
Commissioner.

The cause was thence continued to the May term, 1854, of this court, when, to wit, June 17, 1854, the complainant filed his replication to the amended answer of Daniel Saunders, as follows, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & others. } In equity.

The replication of the said Durant to the amended answer of Daniel Saunders, one of the defendants.

This replicant, saving and reserving unto himself any and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this replicant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this replicant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

ADOLPHUS DURANT.

And thence this cause was continued until the present term of

this court, when it came on to be heard and was argued by counsel, and, upon consideration thereof, to wit, June 7th, 1855, the court doth declare that the defendants, Saunders, Lawrence, and Nesmith, are liable at the election of the complainant to fulfil the conditional agreement made by said Saunders with the complainant, on the 18th March, 1845, by taking from him a sufficient release of his wife's possibility of dower, in the premises in said bill mentioned, and paying him the full agreed price for said estate, viz, the sum of $27,000 and interest from the 26th March, 1845, and also a reasonable compensation for any services rendered after that time by the complainant in perfecting the title of the Essex Company thereto; after deducting the sum of one hundred and twenty-five dollars, then paid said Barker, and all sums necessarily paid by the Essex Company in procuring assignments of mortgages on the land, or otherwise procuring a clear title thereto, including the sum paid by said company to Robert Farley, in his title under the Hubbard mortgage, and for the title of Jacob How, the assignee of the complainant, in his hands, with interest from the times of said payments respectively, and deducting also the sum of two thousand dollars, the agreed value of a certain Fourdrinier machine embraced in said conditional agreement, and which has been delivered to the complainant, with interest from the date of such delivery, and deducting also a reasonable annual rent for the premises in the possession of the complainant during the pendency of this suit; and the court doth order and decree, that it be referred to Edward G. Loring, esquire, a master in chancery of this court, to ascertain and report, as soon as may be, what, if anything, computed as above, would be payable to the complainant; and doth further order, adjudge, and decree, that the complainant's bill be dismissed with costs, as against the def'ts, Rand, Storrow, and the Essex Company, and all further orders and decrees are reserved for the further consideration of the court.

And on the second day of July, A. D. 1855, the following report of the master was filed in the cause, viz:

July 2d, 1855.

By virtue of the order hereto annexed, I have heard the parties in the said cause, and examined their vouchers and evidences, and find and report, that there is due to the said complainant the sum of sixty-eight dollars and eight cents, according to the schedule annexed and marked A, all of which is respectfully reported.

EDWARD G. LORING,
Master in Chancery.

Master's fees, $10.

Adolphus Durant in ac. with D. Sanders & al., June 4th 1855.

Dr.				
1845, Mar. 26.	P'd Stephen Barker.....	$125		
	Int. to date.....	76	50	
				$201 50
" May 14.	" John Tenney.....	1,273		
	Int. to date.....	769		
				2,042
" " 21.	" Abigail Durant.....	1,270		
	Int. to date.....	764		
				2,034
" " 22.	" Mercantile Bank.....	4,212		
	Int. to date.....	2,538		
				6,750
1846, Aug't 20.	" Robert Farley.			
1	P'd Marland m't'ge.....	1,720		
	Int. to date.....	906	44	
				2,626 44
2d	" Hubbard m't'ge.....	4,592	25	
	Int. to date.....	2,528	93	
				7,121 18
3d	" Howe title.....	11,723	75	
	Int. to date.....	6,178	41	
				17,901 16
1849, May 1.	Value of Fourdrinier machine del'd Durant.....	2,000	00	
	Int. to date.....	752		
				2,752
	Over.....			$41,428 28

Dr.	Am't debit bro't over.....			$41,428 28
1847, Jan'y 6.	P'd B. R. Curtis for professional services in suit vs. Farley, settled this date.....	447		
	Int. to date.....	201		
				648
June, 1847.	To rent 8 years of house date, 6 acres of land in Lawrence occupied by compl't a $200 pr. annum.....			1,600 00
				43,676 28

[illegible]

[illegible]

[illegible]

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire, U. S. Commissioner.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Stephen Barker, of Methuen, in said district of Massachusetts, a witness to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence and al., respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination, as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings, herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness, the honorable Roger B. Taney, at Boston, this ninth day of February, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE, JOHN NESMITH, DANIEL SAUNDERS, STEPHEN BARKER, CHARLES S. STORROW, EDWARD S. RAND, ESSEX MANUFACTURING COMPANY. } In Equity.

Interrogatories to be proposed, in behalf of the plaintiff, to Stephen Barker, of Lawrence, in the district aforesaid.

1. Do you know the plaintiff and the defendants in the above entitled cause, or any, and which of them?

2. What is your occupation, and how long have you followed it? Where is your place of residence, and how long have you resided there?

3. Declare whether, or not, you purchased of one Jesse Sargent, on or about the eleventh day of September, 1843, any real estates, situate

in the then town of Methuen; if yea, please annex to your answer the deed thereof which you received from said Sargent, or a true copy of said deed, and declare whether the original deed was recorded in any and what registry, and declare whether said purchase was at an auction sale, or otherwise?

4. Were there, or not, any mill or water-rights or privileges belonging or appurtenant to the premises, or to any and which of them described in said deed? If yea, please state what they were.

5. Declare whether, or not, at the time of your said purchase there were any mills or machinery of any kind upon the premises, described in your said deed; if yea, please state what such mills and machinery were.

6. Declare whether, or not, prior to your said purchase, you had known the said premises for any, and what length of time; if yea, please say whether, or not, they had been used for the manufacture of paper prior thereto.

7. Did you, or not, soon after purchasing said estate, make any arrangement or bargain with said Durant relative to his occupying and leasing the same; if yea, what was it? Had he, or not, authority from you to lease the same to A. B. Mudge & Co.?

8. Did you, or not, after this, make another arrangement with the said Durant relative to his selling the said estates, or give him leave to sell them? And if so, state fully what said arrangement was.

9. Do you know whether, or not, the said Durant had at the time of your purchase of said premises a wife living; and if yea, had she, or not, a right or claim of dower in the said premises?

10. Declare whether, or not, after you had made said purchase, you were applied to by the defendant Daniel Saunders for the said estates; if yea, please say whether said Saunders applied in his individual capacity, or as the agent for, or as acting in concert with any other, and what person or persons, parties, or companies, and as near as you can the time when he so applied.

11. If the said Saunders applied to you as is above inquired about, declare whether you gave him any and what information relative to the rights of dower, if any existed upon the estates, and whether, or not, he made any request of you relative to procuring him a title to said estates; and if so, state it.

12. Had you, or not, after making the agreement above inquired about with said Durant, any meetings or interviews with the said Durant and the said Saunders relative to the purchasing by him of the said premises? If yea, declare how many of such interviews you were present at, where each interview was held, who was present at each, and all that took place and was said between the parties at the said interviews.

13. Declare whether, or not, you afterwards, in consequence of any agreement so made with said Durant authorizing him to sell the estates, made a deed of said estates at said Durant's request, to any person; and if so, was it, or not, to one Thorndike, and whether you delivered said deed to any one, and to whom, and on what terms and conditions?

14. If you say in answer to the last interrogatory that you did make such a deed as is therein inquired about, say whether, or not, the said Saunders afterwards applied to you again for the purpose of procuring a title to the said estates; if yea, state as near as you can when he so applied.

15. Did you, or not, inform him of the fact that you had made said deed; and did you, or not, inform him of the said agreement or arrangement you had made with said Durant, and whether, or not, did Saunders make any request of you relative to purchasing said estates; and if so, whether, or not, did you do any thing, and what, at his said request? And declare whether, or not, you then had a conference with said Durant, and procured him to retain or withhold said deed you had given him running to said Thorndike.

16. Declare whether, or not, you and the said Saunders and said Durant had any interviews subsequent to this, relative to the said estates; if yea, about what time did they take place, and how many such interviews were there, and at whose request, if by any one's, did they take place?

17. If any such interviews took place as are last inquired about, please state how many there were, and detail as minutely as you can all that took place at the first of said interviews.

18. Was there, or not, another interview subsequent to the one inquired about in the last interrogatory; if yea, when and did it take place? Was, or not, any bargain made and concluded between the said Saunders and the said Durant? If yea, state what it was, and declare minutely all that took place, and all that was said between the parties relative thereto. Were any deeds or papers made or delivered at this interview? If yea, describe them with great particularity.

19. Was there, or not, subsequently, *and the* interview between you and the said Saunders and Durant; if yea, when and where did it take place? Declare all that was done thereat; whether any and what papers were written, and by whom; whether any, and if any, what deeds were made; be minute and particular in stating all that was said, done, and agreed upon between said parties.

20. Was, or not, the interview last inquired about the last one which took place between said parties relative to the treaty for said estates? If it was not, state when the last interview took place, and whether any deeds or papers were written or delivered, and describe them; and be particular and minute in stating all that was said or done, or agreed to, between said Durant and Saunders at said last interview.

21. Declare whether, or not, at either of said interviews you gave a deed of your interest in said estates to any one, and to whom; whether such deed was absolute or conditional; and if you gave such deed, at whose request and on what agreement, or understanding, if any, with the grantee and said Durant, and state the date thereof, and whether, or not, said Durant gave a deed at the same time—and, if yea, whether conditional or not.

22. Declare whether, or not, said deeds were at any of the inter-

views above inquired about, delivered to said Saunders; and, if yea, whether, or not, said Durant made any, and, if any, what statement, order, or direction to said Saunders relative to recording or not recording the same; and, if so, what was such statement or direction?

23. Declare whether, or not, a bond was written at any of said interviews; if yea, by whom? State the purport of such bond, to whom it was made, by whom it was to be signed, and what became thereof. Did, or not, Mr. Saunders take it away? if yea, for what purposes, and have you seen it since?

24. Declare whether, or not, at any time subsequent to the interviews above inquired about, you gave to any person or persons an absolute deed of said estates; if yea, to whom did you give it? when did you give it? Declare all the circumstances under which it was given, and your reasons for giving it, and what induced you to give it, and whether, or not, at the time you executed the same you understood, or not, that it was in pursuance of the said previous arrangement between said Durant, Saunders, and yourself.

25. Look at the letter now exhibited by the magistrate, and a copy of which hereto annexed, marked B, and declare whether, or not, it was exhibited to you by said Durant at or about the time it bears date. Do you know in whose handwriting it is, or whose signature it bears? If so, declare.

26. Declare whether, or not, subsequent to the date of said letter, you were present at any interview between the said Durant and said Saunders, and the defendant Nesmith; if yea, how happened it to take place, and where was it had?

27. Declare all that took place and was said at said interview.

28. Declare whether, or not, anything and what was said by you, or by the said Durant, to the said Saunders and Nesmith, relative to giving back the said deeds and papers which you and the said Durant had given of the said estates.

29. If any such interview as is inquired about in the 26th interrogatory took place, declare whether, or not, subsequent thereto, and how soon, whether on the same day, or otherwise, an interview took place between the said Durant and the defendant Lawrence; if yea, where did it take place? Did you, or not, accompany said Durant thereto? if yea, state minutely all that was said and done at that interview by the said Lawrence and the said Durant, and whether any propositions were made to the said Lawrence by said Durant, or by you in his behalf; and, if so, what were they, and what reply thereto did said Lawrence make?

30. Declare whether, or not, there were any mortgages on the said estates which were bought by any party, and by whom, after said interview with said Lawrence. Whether, or not, said Durant aided in obtaining assignments of the said mortgages to the said party. Were, or not, any of said mortgages held by relatives or personal friends of said Durant?

31. What was the amount due on the mortgages on the said estates on lots at the time of said interview with the defendant Lawrence?

32. In whose occupation are the said estates now? If you say they are in the occupation of the said Durant, please say whether, or not, his dwelling-house is situate on either, and which of them; and whether, or not, he has occupied said several estates since the interviews with Saunders, hereinbefore inquired about.

S. BARTLETT,
Pltff's Solicitor.

Defendants except to interrogatories 12, 17 to 21, inclusive, 23, 24, 30 and 31, as seeking to introduce parol evidence of matters reduced to writing, and of the contents of written instruments.

W. H. GARDINER,
Def'ts Solicitor.

A true copy—attest: ISAAC O. BARNES, *Clerk.*

B.

April 1*st*, 1845.

DEAR SIR: In pursuance of the agreement between you and myself on or about the 18th of March last, I notify you that Mr. Lawrence and Nesmith think it not advisable to take the paper-mill and real estate adjoining, upon the terms mentioned in our conditional agreement.

Yours, &c.,
DANIEL SAUNDERS.

North Andover, Apr. 1.

Mr. ADOLPHUS DURANT, Methuen, Mass.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al. } In Equity.

Cross-interrogatories to Stephen Barker, on behalf the defendants in said cause, not waiving legal exceptions to the direct interrogatories, but subject thereto.

1. How long have you known Adolphus Durant? Is he, or not, a near neighbor of yours? Have you, or not, been on terms of friendly intercourse with him, and in the habit of seeing and talking with him often? Has he, or not, often or otherwise, talked and consulted with you as a friend about his business affairs, and relative to the estate in question, and his claims, troubles, and controversies connected therewith?

2. How long have you known the said Durant to be in embarrassed circumstances? Fix the earliest date that you can recollect when he was under pecuniary embarrassment, and state any circumstance or

event by which you can fix a date, or to which you can refer for the purpose of fixing it; and declare whether, or no, he has at any time since, and if yea, when, and for what length of time, been easy and unembarrassed in his pecuniary circumstances, so far as you know?

3. If, in your answers to the direct interrogatories, you have said that you did purchase from Jesse Sargent the estates, mills, and machinery inquired of, please state whether, or no, the said estates, mills, and machinery were at that time subject to a number of mortgages formerly made by the plaintiff; how many upon the real estate, how many upon the machinery, and what amount in the whole you understood at the time of your purchase to be due on said mortgages, and whence you derived your information; whether from an examination of the mortgage papers, or from the statements of said Durant, or how otherwise?

4. If you have said, in answer to the ninth direct interrogatory, that the plaintiff had a wife then living, and that she had a right or claim of dower in the said estates, give the name of his said wife, and declare whether you mean to be understood as testifying that she had not released her right of dower to the mortgagees, or any of them?

5. If you have stated that the defendant, Daniel Saunders, ever applied to you to purchase the estates inquired of, please declare whether, or no, when he first applied to you, the said Saunders was given to understand that you were the legal holder, by deed from Jesse Sargent, of the right, in equity, to redeem the said estates from the outstanding mortgages, and had good right to sell and convey your said title, if the same would be satisfactory to him? Did you, or did you not, then or afterwards, show him your deed from said Sargent, or explain to him its contents, and inform him that you had purchased the premises at a public auction, or how otherwise?

If, in answer to any interrogatory, you have testified that said Saunders was informed by you at that interview that your title, as derived from said Sargent, did not include a release of dower from Durant's wife, please declare whether, or no, the said Saunders was also informed by you that said Durant made, or might make, some question about the title to, or that he asserted, or might assert, some claims to a small piece of land on the north side of the river, in consequence of some defect of description in his deed to Sargent, or from some, and what other cause?

7. Did you, in that conversation, inform the said Saunders of any other objection to the validity and completeness of your title, as derived from said Sargent, to the said equity of redemption? If you made known to him at that time any other objections, doubts, or questions, relative to your said title, or your right to sell and convey the same, please to specify them fully and particularly.

8. Whether, or no, in the same interview, did you advise said Saunders that it would be expedient for him to get a deed from Durant and wife, as well as a deed from yourself, for the purpose of extinguishing the said incumbrance of dower, and curing the other defects, if any,

above mentioned, in your title; and if yea, did you at that time suggest any other, and if any, what, motive or occasion for obtaining a deed from Durant and wife, in addition to your own, except the clearing off and quieting of the said claims and incumbrances?

9. Whether, or no, the said Saunders was told by you, at said first interview, that you had no right to sell and convey all the title which Sargent's deed purported to convey to you, without first obtaining the consent of said Durant, or anything to that effect; or that said Durant and his wife had any legal or equitable rights therein, other than you have above mentioned as notified to said Saunders; if yea, declare all you told him concerning the said rights?

10. If you have testified to your making of a deed to Larkin Thorndike, and have also testified to any interviews with said Saunders, in the interval between the first interview above mentioned and the time of your making the said deed to Thorndike, declare whether, or no, at any of the subsequent interviews prior to your deed to Thorndike, you gave to said Saunders any new or different information concerning the state of the title than you had formerly given him, or suggested any new doubts or difficulties about your right to sell and convey all the title which Sargent's deed purported to convey to you; if yea, state all that was said.

11. If you have testified that Saunders renewed his application to you AFTER you had made the deed to Thorndike, did you at *that*, or any subsequent, interview declare or suggest to said Saunders any new objections, doubts, or questions about your title and right to sell and convey what Sargent's deed purported to convey to you, except the circumstance of your having given the said deed to Thorndike, in pursuance of some arrangement made with Durant since your last preceding interview with Saunders? If you did suggest any other objections, doubts, or questions concerning your said right to sell and convey, declare them fully, and fix the time of such communications as nearly as you can.

12. Whether, or no, before your deed to Messrs. Saunders, Lawrence, and Nesmith was made and delivered, did you give to the defendants, Lawrence, Nesmith, Rand, and Storrow, or either and which of them, any different information on these subjects from that which you had given to said Saunders? Did you communicate personally with either of the defendants, except the said Saunders, on this business prior to the delivery of your said deed? If yea, declare, in substance, what you said to either of them, and to whom you said it.

13. If you have stated in answer to the seventh direct interrogatory, any bargain or arrangement made by you with said Durant about his occupying or leasing, or permitting any other person to occupy the whole, or some part of the premises inquired of, please distinguish and state whether it related to his continuing to occupy, or embraced an authority to lease, and whether or no it was part of the agreement that no occupation, pursuant thereto, should be allowed to interfere with a sale of the premises? Was the said arrangement entered into before or

after the deed from Jesse Sargent was delivered to you? Was it verbal or written? If in writing, annex the same, or a true copy.

14. If in answer to any direct interrogatory you have stated any arrangement made by you with the said Durant, about selling the estates, or giving him leave to sell them, declare whether or no there was any written agreement on the subject; if yea, produce and annex the same, or a true copy, or state why you do not, and in whose possession the same is, or was when you last saw it.

15. If you say that your said arrangement was a verbal one only, or it appears that the writing, if any, is without date, please state whether the same was entered into before or after you had received your deed from Sargent, and if after, how long after; and whether the same was before or after the date of your deed to Thorndike, if you have testified to any such deed?

16. What was the date of the deed to Thorndike? Is said deed now in your possession? If yea, produce and annex it to your answer, or a true copy thereof; if nay, declare in whose possession the same now is, or when and where, and in whose possession you last saw it.

17. Was the above mentioned arrangement about selling, if you have mentioned any such arrangement, an absolute contract between you and the said Durant, to the effect that, in consideration of his undertaking to pay or secure to you the sum of one hundred dollars, or any, and what other sum, you would convey the lands to him, or to each other person as he might direct? or was it to the effect that, if he should find a purchaser able and willing to pay more than one hundred dollars, or such other sum as you may have named, you would allow to the said Durant, for his own benefit, whatsoever the sale might produce beyond the said one hundred dollars, or other sum named?

18. Did you, at any time after the purchase of your title, promise and agree with said Durant to give the entire control of your said title to him, and to convey it to him, or as he should appoint, in consideration of his promise to pay, or cause to be paid, to you some particular sum of money? or was your agreement to the effect that, if he could find you a purchaser, he might have all he could get over one hundred dollars, or any, and what other sum? Did you ever rely as the motive for any arrangement made with said Durant about selling, upon any promise made by him involving a pecuniary responsibility?

19. Did you, at any time after your said purchase, promise and agree with said Durant, that in consideration of his agreeing to let you have some certain sum out of any sale he might make, you would hold the said estates in special trust for him, either for some definite time, or until he should make a sale, and that you would convey as he should direct, and would not sell or convey the title you held except with his consent, and on such terms as he should direct, or anything to that effect? or was it only to the effect, that if he would find some purchaser to take the estate off your hands, he might have all he could get over one hundred dollars, or any, and what other sum?

20. Did you not find the said property unproductive, and difficult to

manage or sell, and requiring heavy payments to prevent the foreclosure of mortgages? Were you not apprehensive, at the time of your arrangement with Durant above mentioned, that the property was running down, and wasting by want of repair, and accumulation of interest, and that you might lose your right of redemption by foreclosure of mortgages?

21. Whether, or no, while you held the said property, did you pay anything, and what, towards keeping down the interest on the mortgages? Did you pay any, and what taxes thereon? Did you make any, and what amount of disbursements for repairs? Specify, as nearly as you can, all the expenses you incurred in the care and preservation of the property, if any, and the amount thereof.

22. Was your agreement with said Durant about finding a purchaser, and having all he could make out of a sale beyond some certain sum, anything more than a voluntary privilege and gratuity granted out of friendly feelings towards him and his wife, and an encouragement to him to aid you in getting rid of a property without loss, which you had found unproductive, difficult to manage or sell, and requiring heavy payments to prevent foreclosure of mortgages?

23. Whether, or no, when you made the said deed to Thorndike, if you say it was made by Durant's request, was it upon his representation that said Thorndike had agreed, or would agree, to become a purchaser, and to pay you the sum you had named, or any, and what other sum? or by what other representation were you induced to make the said deed?

24. Did you deliver said deed, executed, to said Durant, to be used by him as he might see fit, in consideration of any, and what promise made to you by him; or did you send it to said Thorndike, and whether enclosed under seal, or otherwise, and signify to said Thorndike, by letter, or otherwise, that you relied upon him not to use the said deed unless he should conclude to purchase, and to pay you some certain sum?

25. If you have testified that the said deed was afterwards returned to you, and that there was a letter from you to Thorndike, state whether, or no, the said letter was returned with the deed? If yea, or if you preserved a copy of your said letter, annex the said letter, or a true copy, to your answer.

26. When Saunders next applied to you, after the making of your deed to Thorndike, was he brought to you by Durant as a purchaser found by him, or did he come as proposing of his own accord to renew his former negotiations?

27. If in answer to the fifteenth, or any other direct interrogatory, you have said that you disclosed to said Saunders at that interview the arrangement, if any, then subsisting between you and Durant, under which you had made the deed to Thorndike, did you describe that arrangement to him in substance as you have stated it in your answers to the foregoing cross-interrogatories, or how otherwise? Did you ad-

vise him of any, and what impediment to your selling the title which Sargent's deed purported to convey to you, other than the fact that under said arrangement you had already made and put out of your hands the said deed to Thorndike? Did you, or not, notify to said Saunders any, and what other reason, in addition to the reasons you had formerly given him for his negotiating with Durant, except the fact of this outstanding deed to Thorndike, and of your having said to Durant that he might have all he could get by a sale over a certain sum, if he could find a purchaser, or otherwise, as you have above stated?

28. If in answer to the tenth, or any other direct interrogatory, you have stated that said Saunders, when he applied to you, was acting as the agent for, or in concert with, any other persons, parties or companies, other than the said Lawrence and Nesmith, please specify your means of knowing that fact, and declare who all the persons were for whom you understood him to be acting, and whether there was at that time, to your knowledge, any formed association for the purchase of lands or mill privileges in that vicinity, except the said Saunders and his associates, and whether the said Saunders did not purchase for himself and his associates, at his and their own risk, upon expectations that some larger company would or might be formed or organized for the purchase of such lands and water privileges, and that the said Saunders and his associates might sell to such future company at a profit; and whether the said Essex Company was not, in fact, a different company, formed and organized after your conveyance to said Saunders and his associates; and whether they did not sell their said purchases at a profit to the said Essex Company; and whether it was not known to you, and to the complainants, before the conclusion of your negotiations with said Saunders, that some movement was making with a view to extensive purchases of land and water privileges in that vicinity? Please answer particularly each part of this interrogatory.

29. If in answer to the 11th, or any other direct interrogatory, you have disclosed any request made to you by said Saunders relative to procuring him a title beyond your own deed to the estates in question, declare whether, or no, you agreed to comply with his said request, and whether, or no, you undertook anything more than to ask Durant upon what terms he and his wife would consent to sell and convey their respective rights and claims before mentioned. Did you act, or agree to act, as an agent for said Saunders in effecting a bargain with said Durant, or did you act only as a mutual friend, or as the friend of Durant, in bringing to negotiate together; and were the negotiations with said Durant, in respect to the claims of himself and wife, conducted, in fact, by Saunders himself, directly with said Durant, or were they conducted by and through you as the agent of either, and which party?

30. If you have stated that you were present at any interviews between said Saunders and said Durant, relative to the purchasing of said estate, or if you were informed by said Durant respecting such inter-

views, declare what was the price, or valuation, if any, which the said Durant put upon the estates at each of the said interviews, and whether, or no, the said nominal price or valuation included the machinery, with mills, and whether, or no, the said price was set or valuation named, with reference to a title that should include the value of all incumbrances, or how otherwise. Was, or was not, the said nominal price understood to include the amount of all outstanding mortgages, and a full release of dower, and of all claim to the small piece of land on the north side of the river; and whether, or no, any specific price or valuation was named, and, if any, what, at either of the said interviews, for the said claim of dower, or for the said claim to the land on the north side of the river, as distinct items of purchase; and whether, or no, any specific price or valuation, and, if any, what, of the equity of redemption, held by you under the deed from Sargent, was named, previous to the interview at which you agreed to sell the same; and whether, or no, you did agree to sell the same for one hundred and fifty dollars, or any, and what other price?

31. If you have testified to any interviews, negotiations, or agreements, between the said Saunders, Durant, and yourself, respecting the purchase of any titles or claims concerning the said property, declare whether the whole agreement, if any, made between yourself and the said Saunders, and the whole agreement, if any, between the said Saunders and Durant, was, or was not, finally reduced to writing, and evidenced by the several deeds, bonds, contracts, or other writings, drawn up and signed, or prepared for signature, by the respective parties.

32. If in answer to the fifteenth direct interrogatory you have testified that you did have a conference with Durant, respecting his retaining, withholding, or getting back, the deed running to Thorndike, please declare whether, or no, at the time of that conference, any bargain whatever had been made with said Thorndike, whereby he had agreed to become a purchaser of the property therein described; and if so, at what price, or whether he had only agreed to see what he could do towards forming a company, or inducing others, in connexion with himself or otherwise, to become purchasers, and on what terms. Did not the complainant admit that no sale or other bargain was definitely concluded, and did you not thereupon signify your intention or desire not to lose the sale to Saunders, and advise Durant, as a friend, to consider whether his chance of making something out of a bargain with Saunders was not better than his chance of making a bargain with Thorndike, or to that effect? Did you act in this matter as an agent for Saunders, or did you act as the friend of Durant, and as the legal holder of the title, desiring to sell on your own account, and desiring also to give Durant an opportunity to make something out of a sale, according to the privilege you had given him?

33. If you have testified that any agreements were made, and any deeds delivered by you and Durant respectively, running to said Saunders, Lawrence, and Nesmith, declare whether, or no, the said Durant

undertook to make any bargain respecting your deed, or whether he settled the terms of his own deed only. Did he not tell Saunders expressly, in your hearing, that he must settle with you about getting a deed of the title you held from Sargent, or something to that effect? If you have said that he at any time requested you to make a deed to Messrs. Saunders, Lawrence, and Nesmith, was it a conditional deed, in particular, that he requested you to make, or did you understand him to request you to sell and convey, absolutely, to said Saunders; and was it, or not, matter of distinct arrangement between you and said Saunders, independently of said Durant, that you would sell all the title you held for one hundred and fifty dollars, and that you would for twenty-five dollars give him a deed thereof, conditioned to be void unless he should pay you the further sum of one hnndred and twenty-five dollars? Was said Durant any party to that arrangement, otherwise than by requesting you to sell and convey your title to Saunders? Had he any right, interest, or claim, in the said one hundred and fifty dollars which you agreed to receive, or had you any right, interest, or claim in the consideration of any deed made, or agreed to be made, conditionally or otherwise, by said Durant?

34. If in answer to the twenty-second, or any other direct interrogatory, you have testified that, at either of the interviews between Saunders and Durant, anything was said by Durant about recording, or not recording, any deed, declare whether, or no, the said Saunders assented to what was said by Durant, or made any agreement on that subject; and whether this remark by said Durant was not made before any deeds were prepared, and before any agreement of the parties was reduced to writing?

35. If in answer to the twenty-third, or any other direct interrogatory, you have testified that at either of the said interviews a bond was written in a form to be signed by any person or persons not present at that interview, and that the same was taken away by any person in order to obtain their signatures, or for any other purpose, please state whether, or no, the said bond contained the terms and conditions on which said Saunders, Lawrence and Nesmith were to settle with said Durant, if they should elect to perform the conditions of said Durant's deed?—and if yea, whether, or no, you prepared a memorandum in writing, containing, substantially, the same term and conditions as were stated in the bond, except the penalty of said bond; and whether, or no, the said memorandum prepared by you was signed by the said Saunders, and delivered to the said Durant, to stand as the evidence of their agreement until said bond should be signed and delivered; and whether, or no, the conditional deed of said Durant, and the said memorandum taken together, contained, substantially, the whole agreement; and whether, or no, on delivery to said Durant of said memorandum signed by said Saunders, the said Durant delivered, or authorized the delivery of said conditional deed?

36. Please look at the date of the deed from Durant and wife to Messrs. Saunders, Lawrence and Nesmith, now shown to you, observe

the names of the witnesses thereto, and the date of acknowledgment thereof, and look also at the date of your conditional deed to the same grantees, now shown to you, the names of the witnesses thereto, and the date of the acknowledgment thereof, and declare when and where each of the said deeds was, in fact, signed, witnessed, and delivered, as the deed of the party signing; and whether, or no, you received the twenty-five dollars mentioned in your said deed, at the time of the delivery thereof?

37. Please look at the date of your subsequent quit-claim deed, now shown to you, the names of the witnesses, and the certificate of acknowledgment, and state when and where the said deed was, in fact, signed, witnessed and delivered, as your deed, and whether, or no, you received at that time a check for, or other payment of the one hundred and twenty-five dollars mentioned therein; and whether the said quit-claim deed was delivered by you unconditionally, or under any and what restriction as to its use? If in answer to the twenty-fourth, or any other direct interrogatory, you have said that you did give an absolute deed of said estates, do you refer to any other than the quit-claim deed above mentioned, dated March 26th, 1845; and if not, was said deed intended for any other purpose than to discharge the condition of your former deed of March 19, 1845, and to acknowledge the performance thereof? and was not such quit-claim, upon the payment to you of one hundred and twenty-five dollars, conformable to your former agreement and understanding with said Saunders?

38. If in answer to the said twenty-fourth, or any other direct interrogatory, you have testified that you gave the said quit-claim deed of March 26th, upon the understanding that it was pursuant to the arrangement between Durant, Saunders, and yourself, or anything to that effect, do you refer to any other arrangement than Durant's request before mentioned, that you would sell and convey your title to Saunders, and your bargain with Saunders to sell the same for twenty-five dollars paid, and one hundred and twenty-five dollars to be paid, or not, at his election, according to the condition of your deed of March 19? Was any, and what other, motive or inducement held out to you by any party, and whom, for the giving of the said quit-claim deed, than the payment to you of one hundred and twenty-five dollars, agreeably to the condition of your former deed? Was not that payment in performance of the said condition the real consideration and inducement which led you to sign and deliver the said quit-claim deed? and if you have testified to any other motive, reason, belief, or expectation, which influenced you in giving the said quit-claim, declare whether, or not, you communicated the same at the time to the said Saunders, Lawrence and Nesmith, or to any person acting in their behalf?

39. Whether, or no, you concealed from said Durant the agreement you made with said Saunders, or the nature of the deeds you gave pursuant to said agreement; and whether, or no, said Durant, when informed thereof, made any complaint of your proceeding therein; or did he complain only of Messrs. Saunders, Lawrence and Nesmith, for

putting the deeds on record, not signing the bond, and electing not to perform the condition of the deed given by him, or how otherwise?

40. If in answer to the twenty-sixth, or any other direct interrogatory, you have testified to any interview between Durant and the said Saunders, and the defendant Nesmith, at which you were present, after the notice from Saunders to Durant, of April 1, 1845, give, as near as you can, the date of that interview, and declare whether, or no, it was after, and how long after, said Saunders, Lawrence and Nesmith had conveyed their titles to the defendants, Storrow and Rand, in trust for the Essex Company, and whether, or no, the complainant was not told by them, or one of them, that they had already sold and conveyed their titles?

41. Was it as the agent and friend of said Durant, and at his request, or how otherwise, and in what other capacity, that you accompanied said Durant to see said Saunders, Lawrence and Nesmith; and what was the real object and purpose of that interview? Was it not to induce them to retract their notice of April 1, 1845, and take Durant's title on the terms of the conditional agreement between him and said Saunders?

42. If you have testified that anything was said by Durant, or by you in his behalf, in the course of the conversation with Saunders and Nesmith, about giving back the deeds and papers, declare whether, or no, either the said Saunders, or the said Nesmith, admitted any right of the said Durant to make such demand, or any breach of agreement, or of good faith on their part, or any just cause of complaint on his. If yea, state the terms of such admission.

43. If in answer to the 29th direct interrogatory, you have testified that you afterwards went with said Durant to see the defendant Lawrence, and had an interview with him, declare whether the defendant Lawrence admitted that the complainant had any such rights as he claimed, or whether the said Lawrence only waived all question about his rights, and declare whether said Lawrence did not say and answer to the matters complained of, that he was ignorant what had been done or agreed in the premises; that he had already sold and conveyed the title, and had no control over it; that he was not authorized to act for the Essex Company, but that said company was to be organized on some day then near at hand, and would then appoint some agent with power to act in such matters, and that they would undoubtedly do what was right and honorable, or to that effect?

44. If you have said that any proposals were made by said Durant, or by you in his behalf, to the said Saunders, Lawrence and Nesmith, or either of them, declare whether the same were not made for the purpose of being communicated to the Essex Company, and whether, or no, at the termination of said interviews the same were left open for the future acceptance of said company, as they should elect?—and if yea, declare whether it was not one of the said proposals, so left open, that the said Essex Company, after extinguishing by purchase all other claims and titles to the said estates, and ascertaining the expense thereof, should have the right to a deed from said Durant, with release of his

wife's dower, on paying the difference between the price mentioned in the conditional agreement between said Saunders and Durant, and the expense incurred in purchasing the other claims and titles aforesaid; and also, whether it was not left optional with said company to take such deed from the said Durant, allowing such compensation therefor, and for any services he might render in procuring a good title, as the said company, or the said Lawrence should think reasonable, after all other expenses of obtaining a good title had been ascertained?

45. Whether, or no, at a later period, and after the purchase by the Essex Company of the Farley title, and the titles of the mortgages, the said Lawrence signified to the complainant, or to you in his behalf, the readiness of said company to accede to either, and which of the said proposals, and to pay the said Durant for a deed from him, with release of his wife's dower, any, and what sum? and whether, or no, the said Durant was informed of the said offer, and whether he acceded to, or refused to accept the same? and whether, or no, was there any meeting between the said Durant and the said Lawrence in your presence?—and if yea, did or did not said Lawrence offer, in behalf of said company, to comply with the said terms, or any other reasonable terms; and what terms, if any, did the said Durant then insist upon, and were the same reasonable, or otherwise?

46. Whether, or no, you have heard from the said Durant of offers made to him by the defendant, Storrow, as treasurer and agent of the said company?—if yea, state the highest sum which said Durant told you had been offered by said Storrow beyond the expense incurred by the said company in extinguishing, by purchase, the incumbrances and claims on said estate?

47. If in answer to the thirtieth, or any other direct interrogatory, you have testified that the said Durant did aid in obtaining any assignments of mortgages to the said Essex Company, please declare what are your means of knowing that fact in respect to each of the said mortgages, and whether the said mortgage debts were not all over-due, and the said estates open to redemption from the said mortgages by any party holding the legal right to redeem the same?

48. If in answer to the thirty-first, or any other direct interrogatory, you have stated the amount due on the mortgages at the time inquired of, declare what are your means of knowing the fact, and name or describe the several mortgages which you include in that estimate?

49. If in answer to the thirty-second, or any other direct interrogatory, you have said that the said Durant has occupied the said estates, or either of them, during the time inquired of, and still occupies the same, declare particularly which of them he now occupies, and whether the title thereto has not been embarrassed by adverse claims, and whether the right of ownership and possession has not been constantly in dispute and litigation since the formation of the Essex Company?

50. Whether, or no, before the negotiation with said Saunders, had you, in conjunction with said Durant, or otherwise, endeavored to effect a sale of the said real estates and machinery?—if yea, at what

price was the whole of the said property valued as an asking price with a view to such sale, at any time prior to the first application of said Saunders to you, and what was the best offer ever made to your knowledge for the whole of the said property, before the negotiation with Saunders, and at or about what time was it made?

51. If in answer to the foregoing interrogatory you mention any asking price, or any price offered, please declare whether such price asked or offered was understood to be the price of the equity of redemption only, or whether it included the value of the outstanding motgages; and whether it was understood that the purchaser was to have a deed of your title only, or a deed from Durant also, with release of his wife's dower?

52. Whether, or no, you have had experience to any, and what extent, and for what length of time, in the buying and selling of real estate in Methuen, or Lawrence, and the vicinity, and have, or have not, been yourself a buyer and seller thereof, and a personal witness of public and private sales, and an appraiser of estates, and in how many instances, and had other and what means of knowing and judging of the actual saleable value of such property at different periods?—if yea, declare what, in your best judgment, was the fair saleable cash value in the spring of 1843, and thence to the spring of 1845, of a perfect title, free and clear of all incumbrances and adverse claims, to the several parcels of real estate mentioned in the deeds from Durant to Sargent, and from Sargent to you, and whether you mean with or without the machinery in the paper-mills?

53. What, at the periods inquired of, was the known or reputed population of Methuen, and what proportion of the said population lived in that part of Methuen which is now Lawrence; and what is the present known or reputed population of Lawrence, and to what principal cause do you attribute the increased population?

54. Whether, or no, the present value of real estate in Lawrence is any criterion of the value of the same real estate in the spring of 1845; and if not, for what reason?

55. Whether the saleable value of the estates in question, from the time of the conveyance to Sargent, until after your sale to Saunders and others, was, or was not, materially lessened by the embarrassed state of the property, and the uncertainties and questions about the titles?

56. Please look at the original deed from Jesse Sargent to you, and declare in whose handwriting the body of the said deed is written, and compare the date of the said deed, and the date of the certificate of acknowledgment, and the date of the certificate of the register of deeds on the back of the said deed, and state as nearly as you can the time when said deed was, in fact, executed and delivered to you? How long was the delivery to you after the date of the certificate of acknowledgment; and why was Sept. 11, 1843, selected for the date of said deed? Was not the said date at first written one thousand eight hundred and forty-four, and the last "four" afterwards altered to a "three,"

and in whose handwriting is the said alteration, and how long before the date of the certificate of acknowledgment was the said deed, in fact, drafted and prepared for execution? In whose handwriting are the words "fifteen dollars," and whether, or no, were the said words written at the same time with the residue of the writing in the body of said deed, or at any and what other time? Whether, or no, the said fifteen dollars, or any, and what other sum was, in fact, paid by you to said Sargent at the time of the delivery of said deed, or at any, and what other time, in consideration thereof, and when and where, and to whom was the same, in fact, paid, and whether in money, or how otherwise? Whether, or no, there was any discussion between you and the said Sargent as to what you should pay for said deed? Whether, or no, there was any, and what deduction made from the said fifteen dollars for any expenses or charges made or incurred by you against or for account of said Sargent, relative to the said estates? And, why was the said deed not recorded until March 21, 1845, as certified on the back of said deed? Please answer distinctly each branch and particular of this interrogatory according to your best recollection.

57. If you have stated, in answer to the third, or any other direct interrogatory, that you purchased the estates and property described in said deed from Jesse Sargent to you, at any auction sale, please fix as nearly as you can the date of such auction sale, by reference to the date of said deed, and declare where the said auction sale was held, and at what time of the day, and whether the said auction was numerously attended, or otherwise; how many persons were present thereat, and whether any, and what proportion of persons present were operatives employed in the paper-mills, and persons living in the immediate vicinity thereof; and whether there were, in fact, many or few bidders; and whom can you remember in particular, besides yourself, as having bid anything; and who was the highest bidder, and what was your highest bid; and whether, or no, the property put up at said auction sale comprised all the property described in said deed, and whether it included any, and if any, what other property? Whether the property sold was put up in separate lots, or as a whole, and whether the same was sold as subject to any, and what incumbrances or claims? Whether the terms and conditions of the sale were in writing, and were read to the company, or whether they were verbally stated? If verbal, state what they were, and if written, annex a copy thereof, if in your possession, and if not, state in whose possession the said writing is, and its contents, as well as you can recollect? Whether, or no, the said Sargent was present at said sale? Whether, or no, the said Adolphus Durant, and his brother, James Durant, were respectively present? Whether the said James Durant was, or was not, at that time employed in the paper-mills, and in what capacity? Who was at that time occupying and running the paper-mills, and for whose account; and who was occupying the dwelling-house? Please answer distinctly each branch and particular of this interrogatory according to your best recollection.

58. Who acted as auctioneer at said sale?

59. If you state that you acted as auctioneer, who requested you to act in that capacity?

60. Whether, or no, as such auctioneer, you published in any, and what newspaper or newspapers, any advertisement, or gave any, and what other public notice of the time and place appropriated for said sale?

61. If you say that advertisement was made, or notice given by any other person, state what your means of knowledge are, and if you know in what newspaper or newspapers said advertisement was published, and what other notice, if any, was given that you can swear to?

62. By whom were you paid for your services as auctioneer at said sale?

63. Did you, or did you not, render any bill, or make any charge in your account book against any person, and whom, for your services as auctioneer? If yea, annex to your answer a true copy of such bill, and produce to the master the account book containing such entry, and in his presence, copy and annex to your answer the entry to which you refer?

64. Whether, or no, at the time of said auction sale and purchase, any memorandum thereof in writing was made and subscribed by you? If yea, what became of it, when and where, and in whose possession did you last see it?

65. Whether, or no, you made any return of said auction sale to the treasurer of the commonwealth?

66. If you state that you considered yourself to be acting as the deputy of one William S. Annis, declare whether, or no, the said Annis was present at the said auction sale, and whether, or no, he made any memorandum thereof in writing which was subscribed by you? How early before or after said sale did you first call on said Annis, or he on you, and which called on the other respecting it; and whether, or no, he was paid anything, and what, and by whom; and whether, for adopting the said sale, or for permitting you to make the said sale, or for any, and what other account?

67. Whether, or no, at any time previous to said sale, you were requested by any person, and whom, to buy in the said property?

68. Whether, or no, during said sale, had you any conversation with the plaintiff? If yea, was the same carried on publicly, and so as to be heard by the company generally, or was it a private conversation, and what was said between you?

69. Did, or did not, the plaintiff at said sale signify to you his wish or expectation that you would bid off the property, and become the purchaser thereof?

70. Was there, or not, after the said sale, and at or about what time, any visible change of possession of the premises in consequence thereof? Was any formal delivery of the said property, or any part thereof, made to you by the said Sargent, other than, and prior to, the delivery of his said deed? If yea, what property was so delivered, and who witnessed the said delivery?

71. Was there, or not, any contract in writing relative to the sale between you and the said Jesse Sargent, previous to the making of the said Sargent's deed to you? If yea, annex the same, or a true copy thereof to your answer, if in your possession; if not, state what became of it, and when, where, and in whose possession you last saw it?

Please look at the certified copy of a deed now shown to you by the master, purporting to be a deed from said Adolphus Durant to said Sargent, and declare, if you know, in whose handwriting was the body of said original deed written, and whether, or no, the same was signed in your presence and witnessed by you, and whether, or no, you took the acknowledgment thereof; and whether, or no, the said deed was made and acknowledged, at or about the dates therein stated, or at any, and what other times?

73. If you say that the body of said deed was in your handwriting, who requested you to write it?

74. Had you any conversation with the plaintiff, relative to the purpose and object of said deed? If yea, state it fully and particularly?

75. What, if anything, did he say to you relative to the real pecuniary consideration of said deed?

76. Did he, or did he not say, that said Sargent had endorsed a note discounted for him at the Andover bank, which said conveyance was to secure? If yea, whether for a large or a small sum? State as near as you can the sum mentioned, if any?

77. Did he, or did he not say, that he was indebted to Sargent, and whether in a large sum or a small one, and that said conveyance was to be a security for the debt? State as near as you can the sum mentioned, if any?

78. By whose request or direction did you insert the sum of six thousand dollars as the nominal consideration of said deed, and what reason, if any, was given?

79. Was there to your knowledge, or in your belief, any payment of money from said Sargent to said Durant, at the time of the making and delivery of said deed, or any other, and if any, what consideration made to the said Durant for the said conveyance?

80. What, if anything, did the plaintiff say to you about his expectation of selling the estate through Sargent, or about Sargent's selling the estate for him, or about their selling it together, or his selling it in Sargent's name, and what, if anything, about the disposition of the proceeds?

81. Did you, or did you not, at or about the time of your writing the said deed, write also a paper, to be signed by the said Sargent, relative to the said conveyance?

82. From all that was said to you by the plaintiff, and from all the circumstances known to you, at or about the time of said transaction, what conclusion did you come to in your own mind, and what was your belief or impression concerning the object and purpose of said conveyance? Did you, or did you not believe, that the transaction was an absolute sale and conveyance to said Sargent of the property

described in said deed, for the consideration of six thousand dollars, or any, and what other consideration paid, or to be paid by said Sargent, and that the said property was to be held and disposed of by the said Sargent as his own, and for his own sole benefit and behoof, without any accountability therefor, or for the proceed thereof, or any part of them to the said Durant, or what other belief or impression had you at the time, relative to the rights and interests of the respective parties to said conveyance, according to the agreement or understanding between them?

83. Whether, or no, were you acquainted by information from said Durant, or otherwise, with the fact of a dispute between him and his former copartners, Joseph Foster and Seth Dewing, relative to the state of their mutual accounts, and the fact of a reference and award concerning the same? If yea, fix the time as nearly as you can when you first heard of the existence of said dispute, and also the time when you first heard of the said award as made, or about to be made?

84. Whether, or no, the said Durant, Foster, and Dewing, failed in business at any time, and when, as near as you can recollect, and whether, or no, were you acquainted with the fact at or about the time of its occurrence?

85. In the spring of 1843, what property did you know of, owned or claimed by the said Durant, besides his dwelling-house, household furniture and paper-mills, and the machinery and stock used therein? If you know of any other property, what was its amount and value in your belief, and was it or not, mortgaged for any, and what amount?

86. Whether, or no, you were acquainted, at or about the time of its occurrence, by information from said Durant, or otherwise, with the fact of his going into insolvency?

87. Whether, or no, you were acquainted, in like manner, with the fact of his having a controversy with any, and which of his creditors, relative to a discharge from his debts, under the insolvent laws?

88. Did he, or did he not, obtain such discharge, and were you, or were you not, acquainted with the result of his application, at or soon after its determination?

89. Whether, or no, you attended as a witness, or otherwise, at a trial or hearing before the honorable Judge Wilde, then a judge of the supreme judicial court, in May, 1844, or at any, and what other time, relative to the business of any proceedings in insolvency in the case of said Durant? If yea, where was the said trial or hearing, at whose request, or by whose summons did you attend, and whether, or no, did you remain through said trial or hearing?

90. Did you, or did you not, also attend at the auction sale made by Jacob Howe, the assignee in insolvency of the said Durant, on or about the last of May or the first of June, 1844, of the interest of said Durant in the dwelling-house, paper-mills, machinery, and other property whatsoever connected therewith, all, or any of them?

91. At whose request or suggestion did you attend said sale?

92. Had you, or had you not, before said auction sale, any con-

versation with the plaintiff relative thereto? If yea, state all that was said, as far as you recollect?

93. Did, or did not, the plaintiff request you to forbid the sale, or to take means to prevent it, or to give notice that you claimed to be the owner of the property, or to interfere in any, and what other manner concerning said sale?

94. Did you, or did you not, at said auction sale, assert any claim, or give any, and what notice relative to the title of said estates, and other property? And if yea, to whom, in what manner, and in whose hearing did you give such notice?

95. Who bid upon the said estates and other property; how many bidders were there, and who was the highest bidder, and to whom were the same bid off?

96. Who occupied the paper-mills and dwelling-house at the time of said sale; who was running the said mills, and for whose account?

97. If you say that the said Durant was then occupying the premises, or any part thereof, declare whether he was occupying under any lease or contract with you, or with the said Sargent, for the payment of any, and what rent, or upon what other terms he was occupying the same?

98. If you have testified, in answer to the direct interrogatories, that the said Durant was occupying the same premises, or any part thereof, at the time of his agreement with said Saunders, relative to a conditional sale, declare whether, or no, he had continually occupied the same from the time of your auction purchase, and upon what terms.

99. If you say that he was permitted to occupy upon the terms of paying the taxes on said property, keeping the same in good repair, and keeping down the interest on the mortgage debts, or any other terms, state whether, or not, he had, from time to time, fully complied with said terms, or any, and which of them.

100. Did you, or did you not, at any time, and when, inquire of the mortgagees, or any, and which of them, relative to the state of the mortgage debts, or the payment of interest thereon?

101. Did you, at the time of either of the auction sales inquired of, or at the time of the delivery of Sargent's deed to you, know or believe that the sum of six thousand dollars, or any, and what other sum of money, or valuable consideration, had been paid by said Sargent to said Durant as a consideration for the deed from Durant to Sargent? Declare fully and particularly what was your state of knowledge, and what your state of belief, at the said several times inquired of, respecting the true consideration of said deed from Durant to Sargent, and whether, or not, you knew or believed that said Sargent held said land upon a secret agreement between said Durant and himself to sell the same for the benefit of said Durant, or upon what other agreement; or what, if any, impression, understanding, or suspicion had you in relation to any, and what agreement or understanding between said Durant and said Sargent relative to said lands and said conveyance?

Answer particularly each branch of the foregoing interrogatory, and set forth your means of knowledge, or grounds of belief or suspicion, and the cause or reasons of or for such knowledge, impression, belief, understanding, or suspicion, as to any such agreement.

W. H. GARDINER, *for Def'ts*,
By C. G. RIPLEY.

A true copy—attest: ISAAC O. BARNES, *Clerk*.

I, Stephen Barker, of Methuen, in the district of Massachusetts, sixty years of age, on oath, depose and say, in answer to interrogatories proposed to me by the magistrate, on behalf of the complainant:

In answer to—

1. 1st direct interrogatory.—I know the plaintiff. I know all the parties named as defendants. I know there is a company called the Essex Manufacturing Company.

2. 2d answer direct.—I am engaged in doing various kinds of business for myself, and others. Up to 1825 I kept store; since then have been engaged in general business for myself and others. I now reside, and have resided since the spring of 1829, in Methuen village.

3. 3d direct answer.—I did, about that time, purchase an estate of Jesse Sargent, at auction, situated in the then town of Methuen. I have not got the deed with me; my belief is, that I gave it to Daniel Saunders when he purchased the estate for part of these defendants. I have not seen the deed for two years or more; don't think I've seen it since Saunders purchased the estate; it may be among my papers, but if it is, I don't know where. I have no copy of it. I have no recollection of getting the deed recorded. I might or might not. I feel certain of this, that if it was not recorded at the time that Mr. Saunders purchased the estate, that I then gave it to him to get recorded with the other papers.

4. 4th direct answer.—The deed comprehended the whole estate; there were two paper-mills and two water privileges thereon.

5. 5th direct answer.—There were two paper-mills supplied with machinery, for conducting the business of paper-making on a large scale, amongst which was a Fourdrinier machine; this was a machine of a number of thousands of dollars in value.

6. 6th direct answer.—I have known them ever since they were built there. I knew them prior to my purchase; I have known them ever since they were built there, which I should think was fifteen years or more prior to my purchase. They were used for the manufacture of paper prior to my purchase. On the whole, I should think they were built twenty years prior to my purchase. I think one had been built twenty years, the other not quite so long.

7. 7th direct answer.—I gave him liberty to occupy it to make paper, but nothing was ever said about leasing it by me or to me. It was a leave verbally given to use it for making paper until such time as I

should otherwise dispose of it, or want it for any other purpose, for which he was to pay the taxes and the interest on all the mortgages, and whatever expenses should accrue in regard to the estate, and keep the mills and machinery in good repair. He never had any authority from me to lease it to anybody.

8. 8th direct answer.—I told him, that if he would pay me a certain sum, which I then named, that he might sell the estate to whom he pleased, and on the receipt of that sum, before named, I would give an acquittance to any person that he should name. I think those were the words of it.

9. 9th direct answer.—At the time of my purchasing the said premises, Durant had a wife living; she would have a right of dower in said premises, if Durant died before her.

10. 10th direct answer.—I was applied to twice by Daniel Saunders, for the purpose of negotiating for that estate. I understood him to apply in behalf of himself and several other persons, who he was acting in concert with. I understood those persons to be Samuel Lawrence and John Nesmith, then of Lowell. I think the first time he applied must have been as early as the latter part of the year 1844. The second time, I should think, was in the early part of the year 1845. I can't be precise about dates from recollection.

11. 11th direct answer.—I did inform him that my title did not bar Durant's wife's right of dower; and, also, that there was a strip of land on the easterly side of Spiket river, opposite the large mill, intended to be conveyed in my deed, which was not so explicitly described as the company would like to have it. And as a deed would be necessary from Durant and his wife to bar her dower, it had better distinctly embrace the piece of land alluded to. Mr. Saunders thereupon requested me to negotiate with Durant and procure his wife's release of dower, and whatever else might be necessary on Durant's part to make a perfect title.

12. 12th direct answer.—We had two or three meetings relative to the purchasing of said premises. I cannot at this moment recollect but two distinctly; I am pretty sure we talked about it three times. Those two that I distinctly recollect about, were held at my house, where Durant met us, Mr. Saunders and myself, at my request. I have no recollection of any persons being present except Mr. Saunders, Mr. Durant, myself and my sister, Charlotte Barker, who I think was occasionally in and out of the room. I am describing the second and third interviews we had; the first one I can't get at. I think there was one prior to the two I am about to describe. I think it was talked about three times. At the first interview, various arguments were used by Saunders, Durant, and myself, to effect a trade of the premises. Mr. Saunders argued to try to get it lower than the price Mr. Durant asked for it, and Mr. Durant argued to get a higher price for it than Mr. Saunders was willing to give. I cannot say what the language of their arguments was on either side, but they parted without effecting a trade. At this interview I took Mr. Durant aside, after I found he and Mr.

Saunders would not agree, and tried to persuade him to lower his price, by urging some reasons which I thought should induce him to do so, and hoped they would, but I could not, and did not prevail on him to do so. This is all I can recollect of this interview. The other interview, I recollect distinctly about, was also at my house. Mr. Durant was called there by me, at the express solicitation of Mr. Saunders, for the purpose of making another attempt to negotiate. Having, a short time before this interview, and subsequent to the former interview above described, parted with my interest in the estate, by having executed a deed of acquittance to Larkin Thorndike, esq., to be made use of by him, on condition that he reserved to me the sum of money which I had previously told Durant he might have it for, I therefore considered I had parted with my right in the premises, if Mr. Thorndike elected to take the deed and pay me the sum of money that was specified, and so stated to Mr. Saunders when he first called on me to renew the negotiation. I therefore took no part in this interview, but opened a room into which they went and talked alone together. After having been in the room some time, they both returned into the room where I was, and Mr. Saunders said they could not trade, that Mr. Durant had raised his price to thirty thousand dollars. He stated that he had no idea of his asking any more than the price he asked at the former interview, above described. The price above mentioned was five or six thousand dollars more than the price asked at the former interview. Mr. Saunders expressed his surprise and disappointment that he had raised the price above what he had asked at the preceding interview. Mr. Saunders made a few additional remarks, which I do not now recollect, remarks on the same subject. As Mr. Saunders directed those remarks to me, I then replied that that was a thing I had no idea of; that at the interview I had with Mr. Durant a day or two before, to negotiate with him to get the deed and other papers from Mr. Thorndike, and meet Mr. Saunders on that day to attempt the present negotiation, Mr. Durant had never expressed any intention of advancing on the price, and I had never once supposed that he meant to do so, until then informed of it by Mr. Saunders. I then made some remarks to Mr. Durant, to induce him to modify his terms, so that they could trade; this was in the presence of Mr. Saunders. Mr. Durant did not seem to heed my remarks, did not say much, and went out of the house into the yard to get his horse to go home. I followed him out as he passed through two rooms, and either in the last room as he went out, or at the door, I talked with him some, and persuaded him to go back. When he had got back into the room where Mr. Saunders was, I spoke to them both, and advised them to go into the private room and talk the matter over once more, offering some reasons, which I considered would be beneficial for them both to make a trade. After having been in the room some time, they returned again into the room where I was. Mr. Saunders, whether in answer to my inquiry, or voluntarily, I don't know which, stated that they could not trade. And from one or the other of them, I can't tell which, I got the informa-

tion that Mr. Durant had consented to take twenty-nine thousand dollars. Mr. Durant at that time made no stop in the room, but went straight out to get his horse. He appeared somewhat agitated and not inclined to stop or say anything more about it. I followed him out and talked with him in the yard. I used arguments with him to induce him to lower his price and make a trade, and he went back, and they talked together again; both of them came out of the room again and said they could not trade. I think Mr. Durant did not stop in the room, but went out and got his horse and passed by the house on his way home. While he was doing this, I ascertained from Mr. Saunders that he had come down to twenty-seven thousand dollars. I then advised Mr. Saunders to take a bond of it—we sometimes call them bonds, and sometimes conditional deeds; that it wouldn't cost him anything, as Mr. Durant had offered to give in the five dollars which they had ordinarily paid for those bonds or conditional deeds, which sum of five dollars was to be forfeited in case they did not complete the purchase. I think that Mr. Durant made it a condition, that if Mr. Saunders took the bond or conditional deed, that he should pay me some certain small sum, which Durant had agreed to give me, whether he should elect to take the estate or not, and to encourage Mr. Saunders to trade. I told him that I would release that sum which Durant had provided for in my behalf, in case they should hereafter conclude not to take the estate as conveyed by the conditional deed, and run my risk of getting it hereafter from the estate. These remarks were made somewhat hastily, while Durant was getting his horse and driving off. Mr. Saunders seeming to assent, I hastened to a door in that part of the house next to where Durant had gone, and called him back. He came back and they traded. Mr. Durant made the declaration to me that they had traded, stated the conditions of their trade, and wished me to write the bond and other instruments necessary; the bond was to be given by Mr. Saunders, Lawrence and Nesmith, to Durant, specifying the sum they were to pay and the terms of the contract. The sum to be paid was twenty-seven thousand dollars. The bond also specified the time and manner of the payment. Mr. Durant turned to me and directed me to give Mr. Saunders my deed of the same; then turned to Mr. Saunders and directed him to pay me what I asked him. He did not specify the specific sum he was to pay me, meaning, as I understood it, the sum which I had before proposed to take of Durant on giving the deed of the estate. That closed up this interview. I think that, as before, my sister Charlotte was in and out of the room; no one was in the room where they talked together.

13. 13th direct answer.—I did, in pursuance of that agreement, make a deed to Larkin Thorndike, esq. Mr. Durant called on me for the deed to be given to Mr. Thorndike in pursuance of the proposal I had made to him. I executed the deed and sent it to Mr. Thorndike, and wrote a line to Mr. Thorndike, stating the terms on which he might use or take that deed as his own, which terms were, the payment

to me of the sum of money I had offered to give it to Durant for, and not to get the deed recorded, but return it to me again, in case he did not conclude to become responsible to me for that money. I cannot now say whether I delivered the letter and deed to Mr. Durant to carry to Mr. Thorndike, or sent them by mail.

14. 14th direct answer.—Mr. Saunders did apply to me a short time after I had executed and sent the deed to said Thorndike. I can't fix the date any otherwise than by saying, it was three or four days prior to the date of the deeds which I and Durant gave to Messrs. Saunders, Lawrence, and Nesmith. I do not recollect the date of those deeds. I think, in the early part of the year 1845. By referring to my books, I could probably be more definite.

15. 15th direct answer.—I did inform him that I had made a deed, and all the particulars in relation thereto. I did inform of the agreement or arrangement with Durant, and every particular in relation to it. Mr. Saunders did request me to negotiate with Durant to get the papers back from Mr. Thorndike, so that Durant might be able, or have power, to meet him, the said Saunders, for the purpose of attempting to negotiate again for the sale of said estate to said Saunders. In pursuance of this request, I went on the same day to said Durant's, and found him in his paper-mill. After spending much time with him, and a good deal of talk and argument, I prevailed on Durant, or he promised me to go the next morning to Salem and bring back my deed from Mr. Thorndike, and take up his own papers, if any, by which he was bound to Mr. Thorndike, if Mr. Thorndike had not already had the deed recorded, and meet Mr. Saunders at my house on the next day but one. On the next day but one after I left Durant, I having notified Mr. Saunders, he came to my house for the purpose of meeting Durant, and Durant came also. When Durant came in, he immediately handed me the deed which I had given to Mr. Thorndike, without saying much, if anything, in regard to what he had done with Mr. Thorndike. I examined the deed, and perceived that it had not been recorded, and therefore concluded that Mr. Durant was free to negotiate with Mr. Saunders.

16. 16th direct answer.—After having found the deed was not recorded, as stated in the previous answer, and presuming that said Durant had full power or good right to negotiate with said Saunders, I invited them to take a room by themselves, for the purpose of negotiating in relation to it. I did not consider myself a party to that negotiation, and therefore took no part in it, any further than to advise them, when I found they were not likely to agree. The only interview which was had between us, after the negotiation with said Durant, mentioned in the 15th answer, was the one described in the 12th answer, being the last one described in that answer, at which time they completed the negotiation. The time Saunders came to me, as inquired of in the previous interrogatory, was two days before the last interview at my house, described in my 12th answer, and several weeks subsequent to the first interview described in that answer. I cannot

fix the time of this second interview any otherwise than by referring to the date of the conditional deed of said Durant to Messrs. Saunders, Lawrence, and Nesmith. The interview took place either on the day, or the day before, that deed was dated. We also met again after the trade was made, as described in the 12th answer, to complete the writings. In the morning of the next day after the trade was made, Mr. Saunders and Daniel Saunders, jr., came to my house. We first made all the writings which we thought necessary in the case, at my house, and in the afternoon of the same day, I went with them to the house of Mr. Durant, and met Mr. and Mrs. Durant there; the writings were then completed, as far as I recollect, except the signing of a bond from Messrs. Saunders, Lawrence, and Nesmith, to said Durant, neither of whom, except Mr. Saunders, was present to sign it. The second interview, described in my 12th answer, was arranged by me at the request of Mr. Saunders, and also the one last described, at Mr. Durant's house. In regard to the first interview, described in my 12th answer, I am not so positive, but think that also was at the request of Mr. Saunders, but it might have been mutual agreement. I had several talks with both of them on this subject.

17. 17th direct answer.—There were two interviews subsequent to the time Saunders came to me, as inquired of in the 15th interrogatory; one of these I have already described in my 12th answer, and is the second interview there mentioned. The other is the one which took place at Mr. Durant's house, alluded to in my previous answer. In addition to what I have already said concerning the second interview, described in my 12th answer, I now recollect that Mr. Durant, in stating the terms of the trade, remarked to Mr. Saunders that the deed or deeds—I forget whether he used the singular or the plural—was not to be put on record, unless they concluded to take the estate. To this Mr. Saunders made no reply.

18. 18th direct answer.—As there appears to me to be some confusion in the questions in regard to the different interviews inquired about, I will, in answer to this question, state all the interviews that took place, to the best of my recollection. In my 12th answer, I speak of but three interviews; there was another one, a fourth, which took place after the third interview, at which the trade was made—which fourth interview took place at Mr. Durant's house, for the purpose of finishing the execution of the papers. Concerning the first interview, I have already said, in the 12th answer, that I do not distinctly recollect about it. The second I have already described in my 12th answer, and is the first interview there described, as fully as I can recollect. The third interview is the one at which the trade was made; which is also described in said 12th answer, as fully as I can recollect, except what Mr. Durant said to Mr. Saunders at that time, respecting the recording of the deed or deeds, which I have related in my 17th answer. I will now speak of the fourth interview, which took place, at Mr. Durant's house, after the trade was completed. On the morning of the day after the trade, the date of which I am now able to fix

by the examination of some papers during the adjournment, which I believe to be on the 18th of March, 1845, Mr. Saunders and Daniel Saunders, jr., called at my house, where we made, as far as we could then finish them, all the papers which we thought necessary between the parties, for there were some for both of them to sign, as had been agreed upon the day previous. We went to Mr. Durant's house, where we met Mr. and Mrs. Durant; the papers were laid out for the inspection of the parties, and, I think, were read aloud in the presence of the parties. There was a clause in the bond which Mr. Durant objected to, and it was altered to meet his wishes. I do not now recollect what the clause was. The bond was an instrument running to Mr. Durant, to be signed by Messrs. Saunders, Lawrence and Nesmith. I cannot now state the particulars contained in the bond, any further than to say, that it was meant to embrace the terms and conditions of the trade, and the amount to be paid and the manner of paying it, in case the company elected to take the estate conveyed in the conditional deed. I recollect no other paper that we carried for the signature of the parties, except the deed to be signed by Durant and his wife. My impression is, that this deed was a conditional deed, drawn on one of the company's blanks, to become absolute on the payment of some certain sum within a specified time, or to become void; no objection to, or alteration in the deed was made by either party, that I can recollect. We were there several hours, and until late in the evening. I do not now remember what conversation engaged us, except there was considerable talk about the bond; on account that Mr. Lawrence and Nesmith were not there to sign it. Being desirous to complete the writings at that time, I proposed to write a short obligation, to be signed by Mr. Saunders as a substitute for the bonds, which Mr. Saunders said he would carry to Lowell the next morning, and obtain the signatures of Mr. Lawrence and Mr. Nesmith, with his own, and deliver it to Mr. Durant as soon as he returned. This proposition was accepted by the parties. I wrote the paper alluded to, and I think Mr. Saunders signed it and delivered it to Mr. Durant, and that the conditional deed was delivered to Mr. Saunders, and also the bond, for the purpose of carrying to Lowell as above stated. I then left, and went home, and have never seen, as I recollect, any of those papers since.

19. 19th direct answer.—I have already answered this question as fully as I am able in the preceding answer.

20. 20th direct answer.—The interview which I described as having taken place at Mr. Durant's house, is the last one I recollect of that took with Mr. Saunders, Durant, and myself, relative to the sale of the estates.

21. 21st direct answer.—I have already stated that on the day Mr. Saunders and Mr. Durant made the trade at my house, that Mr Durant ordered me to give a deed to Mr. Saunders, in pursuance of the liberty which I had verbally before given to Durant to sell it, and directed Mr. Saunders to pay me the money, somewhere about a hun-

dred dollars, which I had required for giving such deed. I do not now recollect the precise sum. In pursuance of this direction, I did execute a deed of acquittance to the said Saunders, of my interest in said estate. I think the deed was conditioned to become absolute on the payment of a certain sum, of which I do not now recollect the amount, in a specified time, or to become void. My impression is, that I did not give my deed to Mr. Saunders until the first or second day after Mr. Durant's deed to Mr. Saunders was executed. I think it most likely I wrote my deed the day after Mr. Durant had given his deed to Mr. Saunders above referred to; this would be, I think, the nineteenth of March, eighteen hundred and forty-five. I therefore conclude that it is most likely I dated it on the day I wrote it. I cannot say that I delivered it to him on that day. I might not have delivered it until some days after. I doubtless delivered it to him the first time I saw him after it was executed. I know of Durant's giving no other deed or deeds to Mr. Saunders than the conditional deed I have before described.

22. 22d direct answer.—I have already stated in my 17th answer, that Mr. Durant did, at the time the trade was made, tell Mr. Saunders that the deed or deeds were not to be put on record unless they concluded to take the estate, to which Mr. Saunders made no reply. As to the rest of the question, I have already stated as distinctly as I am able, all that I can recollect with regard to the delivery of the deeds and all other papers that passed between Mr. Saunders and Mr. Durant in relation to the purchase and sale of the estates; it was all considered as one estate, and all passed by one deed.

23. 23d direct answer.—The answer to this question will be found in my answer to the 18th question, except that I can further add, that Daniel Saunders, jr., wrote the bond at my house at the time we prepared the other papers.

24. 24th direct answer.—I did give to the Essex Company, or the deed might run to Saunders, Lawrence, and Nesmith, as the former one did, an absolute deed of said estates. I cannot tell from recollection the date of the deed, but I have reason to believe that it was dated March 26th, 1845. I considered it nothing more nor less than an acknowledgment of the receipt of the money mentioned in the conditional deed, and meaning to convey no more and no less than the conditional deed, had it originally been made absolute, or in other words, to make the title absolute, which by the conditional deed was conditional. At the time that I gave this absolute deed I was doing business in the office of the register of deeds in Salem. Daniel Saunders, jr., came there, bringing with him the absolute deed referred to, saying that he wished to pay the money mentioned in the first conditional deed, and wanted me to sign the absolute deed which he had brought. I examined the deed which he brought, and expressed some dissatisfaction to something that was written in it, which I thought did not correspond with the former deed. We had considerable talk about it, and I believe it was in some respect altered. I at length signed it, and he

gave me a check on some bank for the money. I considered the giving of this deed in pursuance and in accordance with the direction which I had had from Mr. Durant, to give Mr. Saunders a deed. My reasons for giving this deed were, that the company were to have an absolute title on the payment of the money specified, and as they preferred that mode of making their title absolute, I acceded to it.

25. 25th direct answer.—I have examined the letter marked B, a copy of which is annexed to this deposition. Mr. Durant did exhibit a letter to me about the time this letter is dated. I think this is the very one; it purported to be signed by Daniel Saunders, and the tenor of it, as near as I can recollect, was the same as this. I have not a sufficient recollection of Mr. Saunders's handwriting to say it is his, but so far as I can recollect, I should think it was his handwriting. It bears the signature of Daniel Saunders, and, as near as I can judge about it, is all in his handwriting.

26. 26th direct answer.—Subsequent to the date of said letter, Mr. Durant called on me and wished me to go to Lowell with him for the purpose of making some arrangement with the company, by which they would still conclude to keep the property, and pay for it, according to the terms at first agreed upon. I went to Lowell with him, and called at the office of Mr. Nesmith; we found Mr. Saunders in Mr. Nesmith's office, or else he came in soon after we did.

27. 27th direct answer.—I immediately introduced the subject of our calling to Mr. Nesmith. I did about all the talking in behalf of Mr. Durant while we were there. Mr. Durant remained present all the time, but said but very little. Mr. Saunders also remained present, but took no part in the arguments that were used on either side. I stated to Mr. Nesmith, in effect, that Mr. Durant felt somewhat surprised and disappointed in his expectations, on being informed that the company did not intend to take his estate. That he was driven into pretty close quarters, made more so by the negotiation he had made with the company, inasmuch as it had put him back in his efforts to obtain a sum of money which he had negotiated for with Mr. Thorndike, and had broken off that negotiation for the purpose of trading with the company; that some four or five thousand dollars must be made out, I think in the month of June following, to save the property from the foreclosure of a mortgage, which was due to Judge Hubbard, and that now he had but a short time to raise it in, and no other means to obtain it, but on the security of the estate which had been bonded to them; we therefore wished they would keep it, and furnish the money to protect it from the foreclosure of this mortgage, as Mr. Durant had scant time to obtain it elsewhere; and if they would do so, we would prolong the time for them to decide whether they would finally purchase it or not, to any reasonable period that they should wish; they might have six months, or even longer, if they chose, to decide the matter in. Mr. Nesmith rejected the proposition altogether, said the estate was not worth the money, or any thing like it. I used various arguments to induce him to accede to my proposition, stating to him

that he would be perfectly safe in taking up that mortgage and any other of the mortgages, if necessary to take them up, because the estate would be holden for them, and was competent to pay them all; and if they should happen to want it for their own use, they would then be sure of having it. To this, or some other of my arguments, he at length replied, something to this effect: that it was absurd to talk of twenty-seven thousand dollars for that estate; that it was not worth more than fifteen thousand at most. I replied something like this: that we didn't come at this time to defraud any body, or to obtain money that we could not obtain elsewhere, provided we had time to do it; and if it were not worth more than fifteen thousand dollars, we could not urge him, nor any one else, to take it in the manner I had proposed; for the mortgages, as near as I could make them, would probably amount to a little over that sum, but I could assure him that we could sell it some thousands of dollars over that sum any day; and if he was fearful that the price would never rise so high as twenty-seven thousand dollars, being the price before mentioned in the bond, I would make one further proposition, viz: that if they would furnish the money, as above stated, we would prolong the time for them to make their election to take it, as above stated, and they should have the refusal of it, at whatever price it should be worth at such period as they should determine to have it sold, or to take it to themselves, as the case might be; that as Mr. Durant seemed to have no fears but it would be worth twenty-seven thousand dollars, he would therefore assent to this proposition. Mr. Nesmith objected to that, on the ground that there would be no way to decide its value. I replied, that it might be decided at auction, if they couldn't think of any better way, and if decided in that way, Mr. Durant would bind himself that they should have it by bidding five dollars more than any other person. Mr. Nesmith objected to that course, alleging that Mr. Durant might employ under-bidders, to carry it up beyond its value. I replied that Mr. Durant could not succeed in his purposes by any such measure; that he was not able to keep the property, and had long since determined to put it into the market, and was determined to avail himself of the first opportunity to do so, and if no other disposition could be made of it, he must do so. Mr. Nesmith rejected this proposition also, and seemed, as I thought, to ridicule the propositions and arguments that we had made to him. I then stated to Mr. Nesmith, that if they declined doing what we proposed, it was necessary on the part of Mr. Durant, that he should have the papers restored to him immediately, that he might lose no further time in obtaining the money from some other source, which was immediately wanted to protect the property from the foreclosure of said mortgage. I do not recollect what Mr. Nesmith said on the subject, but the amount of it was, that he could do nothing about it then. I then appealed to him to know when and what efforts would be made to restore the papers, and how long it would be before Mr. Durant would be likely to receive them. I do not recollect any words he used in reply, but I do recollect that what he said was indefinite, and gave us no

satisfaction; and viewing any further efforts with Mr. Nesmith fruitless, we left the office. When we had got out of the office I found Mr. Durant, who had heard all that had passed, was highly exasperated at the manner in which Mr. Nesmith had treated the case. I quieted his feelings as well as I could, by saying, among other things, that we should step into Mr. Lawrence's office; that I thought we should do well enough with him, if we could see him. We immediately went there and found Mr. Lawrence. It was then the dusk of evening, and we had little time to spend. I disclosed to Mr. Lawrence, in a hurried manner, the object of our visit to Lowell, and the necessity, on the part of Mr. Durant, that impelled him to it. I also related, in as short terms as I could, the interview we had had with Mr. Nesmith, in the presence of Mr. Saunders; the several proposals we had made him; and some of the principal arguments that had been used by myself and Mr. Nesmith, and the rejection of the proposals by Mr. Nesmith; and that he, Mr. Nesmith, was either unable or unwilling to give any information when Mr. Durant would be likely to receive the papers. Mr. Lawrence treated the matter with marked kindness and feeling; expressed his regret that such difficulty had occurred, and further said, that they had conveyed the estate, or their interest in the estate, I cannot recollect which, to a company which was not yet organized, and no one at present was authorized to act for them; but this company would meet on a day which he named, which was not far distant, when they would choose officers who would be authorized to do business for them; and then said to Mr. Durant that he might rest assured that every thing in relation to this case should be rightly adjusted aboveboard. In his remarks he said something about returning the papers, the exact words I cannot recollect. but I inferred from them that he intended to return the papers, rather than to accept the proposals to keep the estate which I had made to Mr. Nesmith, and repeated to Mr. Lawrence, as above stated. Supposing that Mr. Durant would prefer to have them retain the property and furnish the money, as stated in those proposals, I again called Mr. Lawrence's mind to those proposals, wishing him to take them into consideration, and I think gave him to understand that we would leave the matter as it stood, with these proposals before them, either of which they were at liberty to accept; and if they accepted them, Mr. Durant would be ready to put the writings into such shape, or make new ones, as the necessity of the case might require. In all cases where the words "giving up the papers" have been used, I used it, and believe that the others used it, meaning to restore the title to Mr. Durant. I think I did not then know that the deeds had been recorded, and if they had not, the giving them back would be all that Mr. Durant would require. I have related all that I now recollect that took place at these interviews at Lowell.

28. 28th direct answer.—I have already related, in substance, all that took place in regard to the demand for the giving up of the papers, in my 27th answer, as far as I can recollect.

29. 29th direct answer.—We had such an interview as is here inquired of, on the evening of the day of the interview at Mr. Nesmith's office, all the particulars of which, as far as I can recollect, I have answered in my 27th answer.

30. 30th direct answer.—I have always been informed, and believe, there was a mortgage on said estate of about fifteen hundred dollars, to Abraham Marland, of Andover, and another to Judge Hubbard, of four thousand dollars or more, which were taken up by Robert Farley, of Boston. I have also been informed, and have good reason to believe, that there was another mortgage to John Tenney, esq., of about eleven or twelve hundred dollars; and one other mortgage to the Merchants' Bank, in Salem, which, I think, was about four thousand dollars, which were taken up by the Essex Company. There was one other mortgage due to a sister of Mr. Durant, who then lived in Newton, Mass., which I took up myself for the Essex Company. I think the sum then due on it was not far from nine hundred dollars. These are all the mortgages, of which I have any knowledge, that were bought subsequent to the interview with said Lawrence, as far as I can recollect. I have an impression that there was another mortgage on the Fourdrinier machine, of about five hundred dollars, to one Foster & Dewing, or some one else, that was either settled or made void; but how, or by whom, I cannot now recollect. Mr. Durant did aid in obtaining the assignment to the Essex Company, of the mortgage due to his sister, and also that which was due to the Merchants' Bank, in Salem. In regard to the mortgage which the company settled with Mr. Tenney, I was not present, and cannot say whether Mr. Durant aided in the assignment of it or not. With regard to those mortgages which were assigned to Mr. Farley, I cannot say, of my own knowledge, whether Mr. Durant aided them or not; but I have strong reason to believe that he did not aid in the assignment of any mortgage to Mr. Farley, but would have opposed it, if he had of known it was about to take place in season to do so. The only mortgage held by any relative, that I know of, was the one held by his sister; as to personal friends, I don't know about that. I don't know but that they were all his personal friends.

31. 31st direct answer.—I never had the means of estimating them exactly, but, from the best information I ever obtained, I suppose them to amount to something over fifteen thousand dollars, including what interest might be due.

32. 32d direct answer.—The house and the land adjoining, which, I think, has heretofore been called about six acres, has been, since the interviews spoken of before, and still is, occupied by the said Durant. The small or lower paper-mill on the stream, I have been informed, for some years past has been occupied by the Essex Company, but whether my information be correct or not, I cannot positively say. As it regards the land around it, which formerly belonged to it, I think it principally lays common, and I cannot say whether any one occupies it or not. With regard to the upper and larger paper-mill, I believe it was

burnt down some years ago. The land attached to that also, I think, most or all of it, lies common. I don't know whether any one occupies it or not; there is a small house upon it, which has been occupied some of the time, and I don't know but all of the time since said interview, but I do not know who has taken the rents of it.

And in answer to Cross-interrogatories proposed by counsel for Defendants.

1. 1st cross answer.—I first became acquainted with Mr. Durant at the time he came to Methuen and purchased the site on which the large paper-mill stood, which, I should think, might be as long ago as 1820. Until the year 1829, I lived within about four miles of him. In the spring of 1829, I moved to Methuen village, and from that time to this lived about two miles from him. I never had much intercourse with him, until perhaps some few years after I removed to the village. I have for some few years past—say about fourteen years—talked with him much more frequently than I did before. He has often conversed with me about his business affairs, and relative to the estate in question. Since the time that I purchased the estate of Jesse Sargent, he has conversed with me frequently; don't know that he did before that time, in relation to that estate.

2. 2d cross answer.—I never had the means of knowing Mr. Durant's pecuniary circumstances, because his business was principally in the cities of Boston, New York, and Philadelphia, as I had understood, far distant from me, with persons with whom I was not acquainted. I never knew him to accumulate any considerable amount of debts in the vicinity where I lived. All I can say about his being in easy circumstances is, that he generally carried on a large business. I never knew whether it was carried on by his own funds, or that of others, until after I purchased said estate of said Sargent; he then told me that he was at that time working stock for persons in Boston. The first that I knew him to be in embarrassed circumstances, was at the period when public notice was given of his being about to take the benefit of the Insolvent act. Since he took the benefit of the Insolvent act, he has been embarrassed with many lawsuits, and seemed to have very little money.

3. 3d cross answer.—For the number and amount of the mortgages inquired of, I will refer to my 30th direct answer; these mortgages were made by Durant. I think I estimated them, at the time of my purchase, at about fifteen thousand dollars, including interest. I think I derived my information mostly, if not wholly, from Mr. Durant.

4. 4th cross answer.—I do not now recollect her given name. I think sometime after I had purchased it, I did ascertain that she had signed some of the mortgages before named. I also ascertained that Mr. Durant had so far obtained the favor of the mortgagees, as to engage them not to assign those mortgages without his consent. I therefore concluded I could not bar her right of dower by taking up those mortgages, while the mortgagees refused to sign them.

5. 5th cross answer.—The first time that Daniel Saunders applied to me in relation to purchasing said estate, I brought forward my deed and we both examined it. I don't know that any rights were spoken of, further than the deeds specified. I never conceived that I had any, beyond what that deed gave me; and know I never pretended to have any further rights. I did explain to him that my deed would not bar Durant's wife's right of dower. I think I also said to him, that the description in my deed which was intended to cover, and probably would cover, a small strip of land on the opposite side of the large factory, was not expressed so definitely as the company would desire, and if another deed was taken from Durant, that portion of it had better be made more definite. I do not remember, but think it very likely, my having bought it at auction was spoken of. I endeavored to give him the whole history of it, that was in my knowledge. The fact of my having purchased it at auction, I presume that Mr. Saunders knew as well as myself.

6. 6th cross answer.—I did not use the language "asserted or might assert a claim or title" to such piece of land, but informed Mr. Saunders in the language which I have used in my preceding answer, as near as I can recollect. I did not dream of Durant's doing any such thing, or having any knowledge that there was any such deficiency in that deed.

7. 7th cross answer.—I do not know of any other objection to my title as given by said deed, and therefore conclude I had no other objection to name.

8. 8th cross answer.—I think I did advise him to obtain a deed from Durant and his wife of her release of dower, and if such deed were made, to put into it a more perfect description of the strip of land on the northerly side of the river. I think I did suggest another motive for doing it, viz., that as near as I could learn, the persons holding the mortgages would not assign them without Mr. Durant's consent; and Mr. Durant probably would not give such consent, without he was first settled with for his wife's dower. And as I understood the matter, we could oblige the mortgagees to take the money and discharge the mortgages, whether Mr. Durant consented or not, but we could not oblige them to assign the mortgages, and if they were not assigned, we could not use them to bar Mrs. Durant's right of dower, but she could come in for dower as soon as the mortgage was discharged, and therefore that I thought it the safest way to obtain her release of dower.

9. 9th cross answer.—I am very confident that I never told Mr. Saunders, at any interview, that I had no right to sell the interest which I absolutely held in the estate, without first consulting Mr. Durant, until a short time before I gave the deed to Mr. Thorndike. A short time before I gave that deed I had given Mr. Durant liberty, verbally, to sell the estate on condition of his giving me a certain sum of money. After I had given him such liberty, I think I should not have sold it without first speaking with Mr. Durant about it. And all that I ever said to Mr. Saunders on the subject I have related fully in my

12th direct answer, in the second interview there described I have heretofore related all that I can recollect that I ever told to said Saunders in relation to the rights inquired of.

10. 10th cross answer.—I think I never, at any of the subsequent interviews inquired about, gave said Saunders any new or different information than I had formerly given him. Nor did I suggest any new doubts or difficulties about my right to sell and convey.

11. 11th cross answer —I think I did not at that, or any subsequent interview, declare or suggest to said Saunders any new objections, &c., about my title and right to sell and convey what Sargent's deed purported to convey to me, except what resulted from my having promised Mr. Durant, as before stated, and having given Mr. Thorndike a deed in pursuance of that promise.

12. 12th cross answer.—Before my deed to Messrs. Saunders, Lawrence, and Nesmith, I never had spoken, to any one of the parties named, on this subject, except to Mr. Saunders, so far as I can recollect.

13. 13th cross answer.—Shortly after I had purchased the estate of Jesse Sargent, Mr. Durant called on me for the purpose of negotiating for the use of the premises, to work up a certain quantity of stock, which he could have, from a gentleman in Boston, and stated about the period of time that would be required to work up that stock, and inquired the terms on which I would let it to him for that purpose. After some reflection on the subject, I stated to him the terms on which he might occupy it for the purpose spoken of, provided that such occupation or agreement should be made in such a way as not to interfere with the sale of the estate, in case I should have an opportunity to sell it. He never asked for any authority to lease, and I never gave him any, nor supposed that he wanted any such authority. This agreement with Durant was verbal.

14. 14th cross answer.—There was never any written agreement whatever passed from me to Mr. Durant in relation to selling that estate.

15. 15th cross answer.—I do not now recollect the date of my deed from Sargent, and cannot fix the time that I gave Durant liberty to sell the estate, as above stated, any better than to say that it was a short time before I gave my deed to Mr. Thorndike, and a few weeks before the date of my first deed to Messrs. Saunders, Lawrence, and Nesmith.

16. 16th cross answer.—I have already said that I could not recollect the date of that deed; I can only say that it was a short time before the date of my first deed to Messrs. Saunders, Lawrence, and Nesmith, which I think was dated on the 19th of March, 1845. I do not think that deed is now in my possession. I have no recollection of ever having seen it, since the day on which Mr. Durant handed it to me, as related in my 15th direct answer. I think it most likely that I destroyed it, if I did not, it escaped from me in some way without my knowledge.

17. 17th cross answer.—I told Mr. Durant something like this—if he would pay me a certain sum, which I then named, somewhere perhaps in the neighborhood of a hundred dollars, that I would acquit it to him or any one else that he should find to buy it, on the receipt of that sum.

18. 18th cross answer.—I never promised or agreed with said Durant to give him any control of my title to said estate, or to sell it in any other manner, or on any other terms than I have before stated. I do not know that Mr. Durant was ever made responsible to me in any pecuniary matter in relation to selling said estate. When I sent my deed to Mr. Thorndike, as before stated, I relied on Mr. Thorndike to pay the sum specified, if he should accept and make use of the deed, and I had confidence that he would be faithful to that trust.

19. 19th cross answer.—I never made any contract, like either of those inquired of, in this interrogatory.

20. 20th cross answer.—It was not productive to me, as I never received any more for the use of it than I had paid out, and requiring heavy payments to prevent the foreclosure of the mortgages. There was a mortgage to Judge Hubbard on which I think was due over four thousand dollars, for which the money must be raised in a few months from the time the estate was sold to the company, to prevent a foreclosure. I am not aware that the other mortgages upon the estate were called for at that time. I was not apprehensive at that time that the property was running down, or wasting by want of repairs. I think that Mr. Durant had put it in better repair than it was in when I bought it of Sargent; these repairs were made by him, as a part of the compensation for the use of the estate. The interest was accumulating, unless Mr. Durant paid it, as he had agreed to do, so long as he used the estate. I of course knew that I should lose my right, in all that Judge Hubbard's mortgage covered, if I suffered it to foreclose.

21. 21st cross answer.—I paid nothing myself on the mortgages. I think I paid one year's taxes on the estate. I made no other disbursements in money that I now think of, except that of paying the taxes, the amount of which I do not recollect. I cannot answer this question any better, than to say, that the terms on which I permitted Mr. Durant to occupy it were, that he should keep down the interest on all the mortgages, and keep the property in good repair and pay the taxes on the same, and all that was paid and expended in repairs and payment of interest, and additional machinery in the mills, was done by Mr. Durant in pursuance of that agreement.

22. 22d cross answer.—The proposition that I made him as above related, did, of course, leave in his hands all that he got for it over and above the sum which he was to pay to me. The offer was entirely voluntary on my part. I felt friendly toward Durant and his wife, and I felt desirous to have the concern disposed of as soon as it could be.

23. 23d cross answer.—When I made the deed to said Thorndike, it was made upon the representation of Mr. Durant to me, that he had

negotiated with Mr. Thorndike to purchase or take a conveyance, I can't say which, of the estate in question, and if I would execute a deed to Mr. Thorndike, I should have the sum of money which I had named, in a few days; and I understood him that Mr. Thorndike would pay that money.

24. 24th cross answer.—I executed the deed, and sent it to said Thorndike, with instructions not to put it on record without he concluded to become responsible to me for the sum named; and I think I enclosed it either in the letter which I wrote, or in an envelope, containing both the letter and the deed, directed to Mr. Thorndike.

25. 25th cross answer.—The letter was not returned.

26. 26th cross answer.—I have no doubt that he came of his own accord, or at the request of his associates. He never mentioned that Durant sent him.

27. 27th cross answer.—I did describe the arrangement with Durant in the manner I have mentioned, in my preceding cross and direct answers. I have no recollection of informing him of any other impediment to my selling the title, which I acquired from Sargent, other than the fact of my deed to Thorndike and the proposal I had made to Durant.

28. 28th cross answer.—I think I have never said that Saunders was acting as agent, or in concert with any other persons, parties, or companies, than the said Lawrence and Nesmith. I was not informed at that time of any association for the purchase of lands or mill privileges in that vicinity except the said Saunders and his associates. I cannot say at whose risk Mr. Saunders or his associates purchased these lands, neither can I say what their expectations or anticipations were, either in regard to a larger company being formed or organized for the purchase of such lands, or of the selling of them at a profit. The Essex Company was formed after the purchase of the estate in question, and was, in fact, a different company, inasmuch as it comprehended other members than the said Saunders, Lawrence, and Nesmith. I have no personal knowledge of the profit they made by selling to the Essex Company. As near as I can recollect, the purchases which said Saunders, Lawrence, and Nesmith made, were nearly all made prior to the trade which Mr. Saunders made with Mr. Durant. I did not at that time know of any more extensive movement being about to be made, than had already been made, for the purchase of lands and water privileges in that vicinity.

29. 29th cross answer.—At the interview I had with Mr. Durant at Mr. Saunders' request, which was shortly after I had sent my deed to Mr. Thorndike, I made it my sole business with Mr. Durant to persuade him to go to Salem the next morning and get the papers back from Mr. Thorndike, if they were not already closed up and recorded. I don't think I said anything about the terms on which Durant and his wife were expected to trade, and I am quite positive that Mr. Durant did not intimate to me that he should require any other terms than he had required at the preceding interview first described in my 12th direct

answer. Durant agreed to go to Salem the next morning and get the papers, if he could, and meet Mr. Saunders at my house on the next succeeding day. I did not go for the purpose of ascertaining from Durant upon what terms he and his wife would agree to sell their respective rights, but merely to get him to meet Mr. Saunders, for the purpose of again entering into a negotiation. I considered that I acted at that time wholly as the agent of Mr. Saunders. The negotiation that immediately followed at my house was, as I have before stated, wholly conducted by Mr. Saunders and Mr. Durant.

30. 30th cross answer.—At the first interview which I have described in my 12th direct answer, as near as I can now recollect, the price which Mr. Durant demanded was twenty-four or five thousand dollars. At the second interview described in my same answer, which was the one at which they completed the trade, I was not present, but they reported to me, when they came into the room where I was, that Mr. Durant demanded thirty thousand dollars, but eventually lowered his price to twenty-seven thousand dollars. At each of these interviews the price named included the machinery, mills, and other buildings on the premises; out of which sums the incumbrances which were upon the estate were to be deducted; and at the last interview in particular, when the trade was made, a reasonable compensation for the labor of taking up the mortgages was also to be deducted; and in each of said interviews, the respective prices there mentioned was to include a full release of dower, and all other claims that said Durant might have upon any and all parts and portions of the premises. No specific price was spoken of in my hearing for the claim of dower, or to any claim to any particular portion of the estate, as distinct items of purchase. No specific price or valuation was put upon the equity of redemption, held by or under the deed from Sargent, to my knowledge, at either of the interviews. I have no recollection of agreeing or offering to sell my interest in said estate for any fixed price, for I never met with a person disposed to purchase the estate without a release of Durant's wife's right of dower.

31. 31st cross answer.—The agreement between said Saunders and Durant, which I have described as taking place on or about the 18th of March, 1845, was reduced to writing, and evidenced by deeds, bonds, or other writings, drawn up and signed, or prepared for signature by order of the parties, as I have before related.

32. 32d cross answer.—At the time of the conference alluded to, nor at any other time, either before or since that conference, did I ever, to my recollection, hear either Mr. Durant or Mr. Thorndike say what agreement they had entered into, or were about to enter into, in relation to the purchase by the one party, or by the sale of the other, of the said estate. I do not recollect that Mr. Durant at that interview said whether, or not, the bargain with Mr. Thorndike was definitely concluded or not, but I inferred from what Mr. Durant did say, that the papers which Mr. Durant had put into Mr. Thorndike's hands were of a nature that would enable Mr. Thorndike to conclude it, if he

were disposed to put them on record; it was certainly so with regard to my deed, if he had that in his possession. This was one of the reasons why I requested Mr. Durant to go to Salem the next morning. I do not distinctly recollect, but I think it quite likely, that I did request Mr. Durant to take into consideration whether, or not, it would be better for him to make another attempt to trade with the company, where he would be sure of all his money for the price agreed upon, in preference to the trade he had made, or was about to make, with Mr. Thorndike, or something to that effect. In this, however, I could only refer the matter to his own discretion, as I knew nothing about the trade he had made, or was about to make, with Mr. Thorndike. I acted at this interview as the agent of Mr. Saunders, in manner as I have before related. I did not act for myself in any way.

33. 33d cross answer.—I have already related in my 12th direct answer the directions which Mr Durant gave me. I don't know that he settled the terms of my deed any further than that direction implied. After he had directed me to give a deed to Mr. Saunders, he turned to Mr. Saunders and said to him, as near as I can recollect, the words: Mr. Saunders, you must pay, or will pay—I don't know which the expression was—Mr. Barker what he asks. I inferred from this, and whatever other information I had of Mr. Durant's meaning, if I had any other, that he meant that Mr. Saunders should pay me the sum which I had stated to Mr. Durant that I would give a deed for, to him, or such other person as he should direct; and if I asked anything for the business which I had done, or was about to do, in relation to it, he meant that Mr. Saunders should pay it. I have no recollection that Mr. Durant directed me in relation to the manner in which the deed should be written. My impression is, that at one of the interviews which Mr. Saunders and Mr. Durant had together, which I have described as taking place on or about the 18th of March, 1845, at my house, I had understood from Mr. Durant, or Saunders, or both, that a part of the basis of the trade which they had been attempting to make was that Mr. Saunders, if they succeeded in trading, should pay me the sum that was coming to me from Mr. Durant, whether the company should eventually elect to keep the estate or not. I cannot recollect whether this impression was given me after the first or second time they had been in the room alone together at this interview, but I am confident that it must have been before the time which I have related they came out of the room together, and told me they had traded, for I think I told Mr. Saunders in view of it, to the effect that I thought that the company ought to have it. And that it might prove of very considerable importance to them, and the small sum that was coming to me was of but little consequence in the matter; that rather than that should be an obstacle in the way, I would not ask him for that money only on condition that the company should elect to take the estate; and if they should not take it I would run my risk in getting it in some other way. And I now think that was the cause of my giving a conditional deed. I don't know that there could be said to be any arrange-

ment between me and said Saunders, beyond the offer which I made him as before related, and I have no recollection that Mr. Saunders at the time made any reply to the offer. I have no recollection of any sum or sums of money paid at that time, or promised to be paid, any further than there was a sum put into the conditional deed, which the company paid me when I gave them my absolute deed. Doubtless, when I came to make the conditional deed, there was some sum agreed upon, which should cover the money Durant was to pay me, and the expense of my services in relation to that transaction, but I do not now recollect what that sum was. I do not know that Mr. Durant was any party to the giving of the deed, otherwise than by requesting me in the manner related to give the deed to Saunders. I do not consider that Mr. Durant had any interest in the sum Mr. Saunders or the company were to pay me, nor had I any right, interest, or claim in the consideration, on any deed made, or agreed to be made, conditional or otherwise, by said Durant. My view of the matter was, that if the company did not take the estate, then the whole title would revert to Durant, instead of any parts coming to me, provided the company paid me the sum agreed upon. The moment that I received the sum agreed upon between Durant and myself, for the release of my right, either from him or from any one he might agree with, I considered the whole title of the estate to be in him.

34. 34th cross answer.—I have already said that when Mr. Durant and Mr. Saunders came into the room where I was, and stated that they had made a trade, Mr. Durant commenced stating the terms of the trade; while doing so, he turned to Mr. Saunders and said, these deeds are not to go on record unless you conclude to take the estate, to which Mr. Saunders made no reply. This remark was made before any deeds were prepared, or any agreement of the parties was reduced to writing.

35. 35th cross answer.—The said bond was intended, and I believe did contain the terms and conditions on which the said Saunders, Lawrence, and Nesmith, were to settle with said Durant, if they should elect to take the estate conveyed by the deeds then given. I did prepare a short obligation which I thought would be sufficient for the parties, until the bond that had been written could be signed by the parties who were not then present. Mr. Lawrence and Nesmith were not present, and it was necessary that they should sign the bond. This obligation was a short one, and could not contain specifically all the terms and conditions of the bond which had been written for Messrs. Saunders, Lawrence and Nesmith, to sign. I think that Mr. Saunders signed that obligation, and that it was delivered to Mr. Durant, to stand as the evidence of their agreement until said bond should be signed and delivered. I do not think that the conditional deed, and the obligation which I have described, did contain all the items of the agreement which were contained in the bond; I don't think they did. I do think, from my best recollection, that said Durant, on delivery of

the said obligation signed by the said Saunders, did deliver, or authorize the delivery of his said conditional deed.

36. 36th cross answer.—I have examined what purports to be a certified copy of the deed from Durant and wife to Messrs. Saunders, Lawrence, and Nesmith. I have observed the name of the witness, and the date of its acknowledgment. I have examined my original conditional deed to the same parties, the names of the witnesses, and the date of its acknowledgment. From my own recollection, and also judging from the names and date of the certified copy of the deed of Durant and wife, I have not the least doubt that it was signed, witnessed, and delivered at Mr. Durant's house on the day, or evening of the day, of which it bears date; and that my said deed was written and signed by me, and witnessed by Charlotte Barker, at my house, on the day which it bears date; and that John Tenney subscribed his name as witness to it at the time he took the acknowledgment of it, which appears to have been the day after I signed it. I don't know when I delivered my deed to Mr. Saunders, but I have no doubt that I delivered it to him the first time I saw him after it was executed. I have no recollection of receiving any money of Mr. Saunders at the time I delivered him the deed. If I did receive any, I have entirely forgotten it.

37. 37th cross answer.—I have examined the said quit-claim deed. This deed was signed, witnessed, and delivered in the office of the registry of deeds in Salem, Mass. I cannot say on what day; it was probably on or near the day it is dated. The sum mentioned therein is one hundred and fifty dollars. I am very sure I did not receive one hundred and fifty dollars, but I did receive a check on some bank for the sum that was due to me, which, I do think, was one hundred and twenty-five dollars. I infer it from the fact that that was the sum mentioned in the conditional deed. I have no recollection that there was any condition or restriction as to its use. Wherever I have spoken of having given an absolute deed to Messrs. Saunders, Lawrence, and Nesmith, I have referred to this quit-claim deed, which was intended by me for no other purpose than to discharge the condition of my former deed of March 19, 1845, and to acknowledge the performance thereof. It was conformable to my agreement with said Saunders, as set forth in said conditional deed.

38. 38th cross answer.—I have already, in my last answer, related the purposes for which I gave my quit-claim deed of March 26th. I conceive that that second deed of March 26th was necessary to complete the title which Mr. Durant directed me to give to Mr. Saunders, on the day on which they made the trade at my house. I think I have already stated in some of my various answers, in substance at least, that I made no trade myself with Mr. Saunders, in relation to the sale of this estate, but left the whole subject of the negotiation to be made between Mr. Saunders and Mr. Durant. I did not consider it proper for me to trade the property away after I had given Mr. Durant liberty to do so, and had given my deed to Mr. Thorndike in accordance with

that offer. I know of no motive held out to me, by either party, for giving the said quit-claim deed, or the said conditional deed, except that I had told Durant I would do so on the payment of a certain sum of money, either by himself or any person selected by him. In accordance with my promise to him, he did select and order me to convey my title to Mr. Saunders, who was to pay, and did pay, that sum, when I gave him the absolute deed of March 26th, above referred to. I don't know that I have testified to any other motive, reason, belief, or expectation, which influenced me in giving the said quit-claim.

39. 39th cross answer.—I never concealed from Mr. Durant, intentionally, any part of the transaction between me and Mr. Saunders, in relation to giving my deed to Mr. Saunders, and should have informed him of the manner in which I did it, if he had ever asked to be informed. Whether he ever did make such inquiry or not, I do not now recollect. Sometime after the trade was made and the writings completed, and as early as the time when we met Mr. Nesmith, Saunders, and Lawrence, at Lowell, as before related, he then knew of the manner in which I had conveyed my interest in said estate to Saunders, Lawrence, and Nesmith, and I have no recollection that he ever made any complaint in regard to it. Durant did complain very much about Mr. Saunders, for putting the deeds on record. He made some complaint about not having received the bond. He complained that their electing not to perform the condition of the deed had injured him, on account of his having broken off from the trade with Mr. Thorndike, for the purpose of trading with them.

40. 40th cross answer.—We had an interview with Saunders, Nesmith, and Lawrence, at Lowell, as I have related in my 26th and 27th direct answers. This interview took place a few days after Mr. Durant had shown me the notice that he had received from Saunders, dated April 1st, 1845. I have an impression that Mr. Durant told me that he did not receive it until two or three days after its date. I should think the interview took place somewhere about the 10th of April, but I cannot say positively. I don't feel any degree of certainty as to the precise time of this interview. I have no means of knowing the time at which Messrs. Saunders, Lawrence and Nesmith conveyed their titles to Messrs. Storrow and Rand. At the interview at Lowell, at Mr. Lawrence's office, Mr. Lawrence told us that they had conveyed their titles. I do not recollect whether or not he told us to whom they had conveyed them.

41. 41st cross answer.—At the interview above alluded to, at Lowell, I went with Durant, at his request, to aid and assist him in the object which he had in view. We expected to see Mr. Nesmith and Lawrence; we did not expect to see Mr. Saunders at that time, but found him there. The object and purpose of that interview—as I understood it—was, in substance, to induce them to retract their notice of April 1, 1845, and take the estate on the terms of the original agreement, or make some other terms, equivalent to the original agreement, by which Durant could obtain money and assistance in season to take up the Hubbard mortgage, as it was called.

42. 42d cross answer.—In regard to any admissions that were made in relation to any demand or request which I made in behalf of Mr. Durant, I do not think that Mr. Saunders ever made any remark in relation to the demand or request. I have no recollection that Mr. Saunders spoke a sentence in relation to any of the subjects introduced at that time between myself, Mr. Durant, and Mr. Nesmith, except when I appealed to him for the correctness of some things which I had stated, which Mr. Nesmith had seen fit to dispute. In regard to what Mr. Nesmith said at that interview, I have no recollection of forming any opinion at that time, from all that he said, whether he meant to reject or admit any rights which we claimed at that time, or whether he meant to convince us that he was acting in good faith, or not in good faith. There seemed to me to be little that was tangible in the remarks which he made. I could not fathom his objects or intentions. It appeared to me like attempts to evade the questions and issues between us, which we attempted to have adjusted or arranged.

43. 43d cross answer.—I do not recollect that at the interview inquired about, Mr. Lawrence did admit or deny that the complainant had or had not any such rights as he claimed, but waived or did not introduce any remark on that subject. I think Mr. Lawrence did say something implying that he was ignorant of what had been done or agreed in the premises. He said they had already sold and conveyed their titles. I have no recollection that Mr. Lawrence said he had no control over this one. I have no recollection of such a company as the Essex Company being spoken of. I think he spoke of a company about to be formed, but don't think he gave any name to the company. He said this company was to have a meeting at some future day which he then named, which was not far distant, that they would then appoint some person who would have power to act in such matters, and that the business would be done up honorably and aboveboard, or words to that effect.

44. 44th cross answer.—At the time I entered Mr. Nesmith's office at the interview at Lowell, I don't think that either Mr. Durant or myself knew of any company by the name of the Essex Company. I do not think we knew that Messrs. Saunders, Lawrence, and Nesmith had conveyed their titles, until we were that day told of the fact. After having received the information from Mr Lawrence that they had disposed of their titles, and that a company was formed, or about to be formed, who would in future transact the business in relation to the claims we had presented, I did expect that whatever business was done, would be done through or by the officers of that company; and I did expect that Mr. Lawrence would communicate the proposals we had made, and the requirement for the papers, in case they did not accept those proposals, and we relied on Mr. Lawrence to see that it was done. I think he assured us it should be attended to at the termination of said interview. I do consider that the proposals made to Mr. Nesmith and to Mr. Lawrence, as before stated, were intended to be left open for the future acceptance or rejection of said company, in the same sense and meaning as they were offered, as I heretofore stated

they were offered to Messrs. Nesmith and Lawrence. The proposals referred to the bond which was given, or to be given, on the trade between Mr. Saunders and Mr. Durant, on the 18th of March, 1845, which described the amount and mode of payment, and other matters to be performed on the part of the company in payment for said estate. In these proposals spoken of, we made no new or different terms in regard to the mode of payment than as they had before been set forth in said bond; but in regard to the time for performing those conditions, I think we offered to give them any reasonable time that they should require, beyond that stated in the bond. By fulfilling the conditions of the bond, the company were to have a deed from Durant, with his wife's release of dower.

45. 45th cross answer.—After the Essex Company had purchased the Farley title, and the titles of the mortgages, I called on Mr. Lawrence at Lowell, and stated to him that Mr. Durant had expressed to me his readiness to settle with the company on the terms of the original contract, made the 18th of March, 1845, and would be glad to meet him for that purpose. Mr. Lawrence expressed his readiness to do so, and said he would meet him on any day that I would appoint; he wished me to meet with them. I referred the appointment of the day to him. He appointed the day, but as it stormed that day he did not come; but the next succeeding day I met him at Mr. Durant's house. I had previously told Mr. Durant of Mr. Lawrence's readiness to settle according to the bond, and that it was agreed between Mr. Lawrence and myself that Mr. Lawrence would fetch with him an account of all the payments and charges which had been made in settling the mortgages, and obtaining their title to the estate, and would settle them according to the condition of the bond. After we met at Durant's house, and had been there a short time, I introduced the business between Mr. Lawrence and Mr. Durant, by inviting them to enter immediately into an examination of the papers. Mr. Durant replied to the effect that he didn't wish to go into any reckoning about it; that he should state his claims in a short way; that he stood upon an agreement which he had made with Mr. Lawrence in his office at Lowell, at a time subsequent to the interview which took place at Mr. Lawrence's office at the time that I was there with him; that in that agreement Mr. Lawrence was to give him all that the property was worth; that he should not think of reckoning on the old agreement at all. Mr. Lawrence denied having any understanding of any such agreement. After some further talk on the subject, Mr. Durant declared or made a statement of what he should require of Mr. Lawrence or the company, as the terms on which he would give his deed and release of dower. I do not recollect that Mr. Lawrence said to Durant that he came to settle with him according to the conditions of the bond. I don't remember that Mr. Lawrence made any express declaration of the terms which he was ready to settle upon. As near as I can recollect, the terms which Mr. Durant stated were, that he, Durant, should retain the house and the land annexed to it, containing some five or six acres, and a certain portion of the land around or near by the lower paper-mill, which was

near where the Essex Company's machine shop now is. I think he did not define the quantity of land, or where the boundaries of it should be made; and also, in addition, that the company should pay him a number of thousand dollars besides. I can't tell how many now. I told Mr. Durant at the time that I thought his requirement was unreasonable, that he was asking Mr. Lawrence to do what he had no power to do, adding that I presumed Mr. Lawrence had no power to convey the lands that belonged to the company.

46. 46th cross answer.—I have heard from Durant of one offer, which I distinctly recollect he said Mr. Storrow had made him, which, as near as I can recollect, I think Mr. Durant told me was one thousand dollars over and above all the expenses the company had incurred in procuring their title.

47. 47th cross answer.—After it had been understood by Mr. Saunders and myself that Mr Farley had taken up the Hubbard and Marland mortgages, Mr. Saunders requested me to go immediately and take up the remaining ones, one of which was to the Merchants' Bank in Salem, the other to Mr. Durant's sister, who resided in Newton; having previously understood, as I have before related, that Mr. Durant had so far obtained the favor of those mortgagees, that they would not assign them without his consent, or an order from him. I stated to Mr. Saunders that I thought it would be necessary to first see Mr. Durant and get his aid and assistance, as the company would want them assigned, and not merely discharged. I called upon Mr. Durant for that purpose; he went with me to Newton, where he requested his sister to assign the mortgage as I should request her, which she did. We returned to Boston, where I think Mr. Durant gave me an order on the Merchants' Bank to assign their mortgage to the Essex Company, or according to my direction, I can't say which. This order I handed either to Mr. Rand or Mr. Storrow, at Salem. I feel quite certain that the two mortgages I have spoken of were over-due, and open to redemption by the party holding legal right to redeem the same.

48. 48th cross answer.—My means of knowing the various mortgages, which I have already described in my 30th direct answer, were by hearsay from Mr. Durant and some others.

49. 49th cross answer.—Mr. Durant now occupies, and has occupied from the time that he conveyed to Messrs. Saunders, Lawrence, and Nesmith, as aforesaid, the large dwelling-house which he built on the premises, and the piece of land containing five or six acres on which the house stands, which said Durant bought of Isaac Bodwell. I have no recollection that any claim has been made that has come to my knowledge, except that of the Essex Company, and the claim which Mr. Farley made, which was settled by the Essex Company.

50. 50th cross answer.—Before the negotiation with said Saunders, and before said Saunders made his first application to negotiate for said estate, I had repeatedly offered it for sale, and in one instance which I recollect Mr. Durant and myself attempted a negotiation to effect a sale of said estates and machinery; at which time I think the price we asked was twenty-two or twenty-three thousand dollars. I do not

recollect having any distinct offer for it, unless it was at the interview alluded to in this answer, when Mr. Durant and myself attempted to negotiate a sale, when the gentlemen with whom we were attempting to negotiate said something about twenty thousand dollars. Mr. Durant subsequently told me it was meant as an offer, but I did not at the time consider it an absolute offer, but thought the matter was left for further consideration of the purchaser; his name was A. Stevens. I cannot state the time of this negotiation, but I think it was before much, if any, progress had been made in purchasing the lands which were taken by the Essex Company.

51. 51st cross answer.—The price mentioned in my foregoing answer, as being asked and offered, included the value of the outstanding mortgages. The purchaser was to have a deed of my title, and a deed from Durant, with release of his wife's dower.

52. 52d cross answer.—I have had very considerable experience for near forty years in buying and selling real estate in Methuen and vicinity, and a personal witness of public and private sales, and have acted as appraiser of estates; but the knowledge that I have acquired, by what of experience I've had in the value of real estate in general, would not enable me to judge correctly of the value of such property as that in question, including the paper-mills and machinery, as the prices of such property were governed by the prosperity or depression of the business which they conducted. Sometime between the springs of 1843 and 1845 I did form an opinion that the whole of said estate, including the two mills with their machinery, the two water privileges, dwelling-houses, and other buildings upon the same, were worth twenty-six or seven thousand dollars to a person who wanted such an establishment to use for the purposes for which it was designed—that of paper-making. I formed this opinion by examining two paper-mills, with their machinery and water privileges, and obtaining from their owners the price at which one of them had been recently purchased, and the cost of building up the other. But during this period I think I understood that the business of paper-making was rather depressed, and we had no direct offer for it other than those I have heretofore alluded to.

53. 53d cross answer.—I cannot tell what the population of Methuen was at this time. I have an impression that it was about three thousand. One-ninth or one-tenth part of this population lived in that part which is now Lawrence. I do not know the present population of Lawrence. I attribute the increase of population of Lawrence to the manufacturing and other business which has been introduced there, and facilities which the railroads leading into and out of Lawrence afford.

54. 54th cross answer.—The present value of real estate in the business part, or near the business part, of Lawrence I do not consider any criterion of the value of real estate in or near the business part of Lawrence in the spring of 1845, on account of the rapid increase of population and business there since that period.

55. 55th cross answer.—There were no uncertainties or questions

about the title, which I know of. All our negotiations were based on the promise that we should furnish a good and sufficient title. I don't know that any of those with whom we attempted to negotiate expressed any doubts of the title we proposed to give them.

56. 56th cross answer.—I have examined the deed, and find the body of it to be in my own handwriting. I think from recollection, not from anything I see in the deed, that it was written at my house, perhaps, some weeks before I carried it over to Sargent's house, when it was delivered to me—probably on the day, or very near the day, of its acknowledgment. The date of the deed was made, or I think was intended to be made, on the day which I purchased the estate of Sargent. The alteration alluded to in the question is in my handwriting. I think the "three" appears to be written over some other letters. I think the deed might have been drafted and prepared for execution one or two weeks before the date of the acknowledgment. The words "fifteen dollars" are in my handwriting. I have no reason to doubt but they were written at the time of the other writing in the body of the deed. On the day of the delivery of the deed to me by said Sargent I paid him fifteen dollars mentioned therein, in money. There was no discussion between me and Mr. Sargent as to what I should pay for the deed. No deduction was made from the fifteen dollars. I know of no reason why said deed was not recorded until March 21st, 1845, except that I knew Mr. Sargent to be a responsible man, and considered his deed as being as safe to me without being recorded as with. When I take deeds that are perfectly safe, I am in the habit of keeping them till I go myself to the register's. When I consider them not safe, I send them immediately by mail.

57. 57th cross answer.—I did purchase the estate of Jesse Sargent at an auction sale; I think by the date of the deed that the auction sale was the 11th of September, 1843. I have no doubt that I intend to date the deed the day of the sale; that is my only reason for thinking so. The sale was on the premises. I don't recollect the time of day it was held, but think it was in the afternoon. It was not very numerously attended. I can't say how many persons were there; there might have been thirty—perhaps more. I do not know as I at that time knew the operatives in the mills; there were persons present who lived in the immediate vicinity. I think there could not have been but two bidders beside myself. I do not remember who these bidders were, but I think there were two bids made before I bid myself, and I don't know whether or not at that time I knew the names of the bidders. The bid which I made was fifteen dollars, which was the highest bid which was made. The property put up at said auction sale comprised all that was described in the deed of Sargent to me; it included no other property. The property was put up as a whole. It was sold subject to the mortgages which I have heretofore described. I do not now recollect whether the terms and conditions of the sale were read to the company, or verbally stated. I do not recollect the terms any further than that the amount and number of the mortgages was stated, and that what we were about to sell was the right to re-

deem the estate from those mortgages. I cannot say positively whether Mr. Sargent was present or not; Adolphus Durant was present; I cannot say whether James Durant was present or not. I don't recollect that I ever saw James Durant but once in my life to know who he was; then it was somewhere in or near the paper-mills, but whether before or after, or at the time of the sale, I can't say. Adolphus Durant, as I understood him, was running the paper-mills at that time, working stock for some person or persons in Boston; he also occupied the dwelling-house.

58. 58th cross answer.—I acted as auctioneer.

59. 59th cross answer.—I do not recollect who first requested me; my impression is that some one, who first applied to me; I referred them to Mr. Annis, I think, to do that business, but that a few days before the sale, some one, who I think was Mr. Durant, came to me and agreed with me to attend as auctioneer, in case Mr. Annis could not attend.

60. 60th cross answer.—I had nothing to do with advertising the property; it was done before I was requested to act as auctioneer.

61. 61st cross answer.—I cannot say positively what knowledge I had of the advertisements, but I have an impression that it was advertised in a Haverhill paper, and that a copy of it was shown to me, or left with me, I can't say which, at one of the times at which they applied to me to attend as auctioneer. I cannot now say whether I ever saw any further notice of it or not.

62. 62d cross answer.—I do not recollect that anybody has ever paid for my services as auctioneer.

63. 63d cross answer.—I don't think that I ever made any charge of it to any person. I expected that Mr. Sargent would settle it when I took the deed and paid him the purchase-money, which I then expected would be attended to in a few days, but it was a long time before I could get the deed, and I did not at the time I took the deed think of it.

64. 64th cross answer.—I do not recollect that I made any memorandum of it myself. I acted as auctioneer for Mr. Annis, and on my return home from the sale, gave him an account of it, which I think I saw him enter on his book. I have not seen it since.

65. 65th cross answer.—I made no return of it. I sold it for Mr. Annis, by an agreement made with him on the morning before the sale, and delivered the account of the sale to him accordingly, for him to make return of.

66. 66th cross answer.—I did consider that I was acting as the deputy of Mr. Annis. I do not now recollect whether it was William S. Annis, or his brother, Bradley Annis. The Annis under whom I acted was not present at the sale. When I returned home from auction and related to him the sale, I think I saw him make a record of it, but I have no recollection of signing it myself. I do not think Mr. Annis ever called on me respecting the sale. On the day of the sale, perhaps an hour or two before the sale, I called on Mr. Annis to know whether he was going to the sale, or wished me to go in his stead. He told

me that he wished me to go in his stead if I could. I told him that if I sold it I should sell it for him, and assigned some reasons for doing so. I called on him on my return from the sale and gave him the account as above stated. I think I handed him fifty cents, which I supposed would pay him for his trouble in adopting the sale and the few cents of government duty.

67. 67th cross answer.—I don't think I ever had any special request made to me by any one to purchase it. I have an impression that Mr. Durant at one time, after naming one or more that he thought would bid upon it, *he* invited me to attend, saying that I might have an opportunity to make something out of it, or words to that effect. I have no recollection that he ever said or intimated to me that he wished me to bid it in for him, or for any one else.

68. 68th cross answer.—When ten dollars was bid for the estate, after waiting some time and finding I could not get the bid raised, I then for the first time conceived the idea of bidding upon it myself. I looked around for Mr. Durant and saw him conversing with some persons a few rods from me. I went directly to him, and inquired of him what had been stated before to the company present, that all the machinery and other implements belonging to the mills that were now in them were included in the sale, and whether or no he felt positive that he should be ready to quit it in two weeks? On being answered in the affirmative, I returned to my position as auctioneer and made the bid. I made no private conversation of it. I do not think I called him aside from the persons he was conversing with; my impression is that I preferred to have witnesses to what I said, and the answer he made.

69. 69th cross answer.—I have no recollection that he ever signified to me any wish that I should become the purchaser rather than any one else. I think he merely invited me to attend the sale, as I have before related. I am confident that he had no expectations I would do so, for when he invited me I gave him to understand I should not think of purchasing it at any rate, nor be likely to attend the sale. This was before I expected to act as auctioneer.

70. 70th cross answer.—There was no one occupied it after I purchased it, to my knowledge, except Mr. Durant. I don't recollect that there was any formal delivery of it to me. Some nominal delivery may have taken place on the day of the sale, but if it did I have forgotten about it.

71. 71st cross answer.—There never was any contract between Jesse Sargent and myself in relation to the sale of said estate, previous to the time he gave me the deed.

72. 72d cross answer.—I have an impression that I was called upon at my house to write the deed of Adolphus Durant to Jesse Sargent, and that I wrote it, and it was executed there. I have no doubt but that it was signed in my presence and witnessed by me, as appears from the copy. I have no doubt but that the deed was written, or that I was applied to to write it, on the day on which it purports to have been written, and that the acknowledgment was entered upon it by me at the time which it bears date.

73. 73d cross answer.—My impression is that Mr. Durant made the request.

74. 74th cross answer.—I have no recollection of anything that was said by him, or inquired of by me, relative to the object or purpose for which he was about to give said deed.

75. 75th cross answer.—I do not think that he said anything to me about the real pecuniary consideration of the deed; have no recollection of any conversation of that kind.

76. 76th cross answer.—I cannot now recollect that Mr. Durant at that time said anything about Mr. Sargent's having endorsed a note for him.

77. 77th cross answer.—I do not now recollect whether, or not, he said anything about being indebted to Mr. Sargent at that time.

78. 78th cross answer.—I think it most likely that the sum of consideration in the deed was named by the person who requested me to write it, who, I believe, was Mr. Durant. I do not recollect whether, or not, any reason was given for putting in any sum for consideration.

79. 79th cross answer.—I do not think that I was present at the delivery of the deed from Durant to Sargent. I never had any knowledge how, or in what way, Mr. Sargent settled with Mr. Durant for the deed.

80. 80th cross answer.—I cannot recollect anything that Durant ever said to me about any of the matters inquired of in this interrogatory; he might have said something, but I don't recollect it.

81. 81st cross answer.—I do not recollect whether, or not, I wrote any paper in relation to said conveyance, except the deed.

82. 82d cross answer.—It is so long ago that I cannot now recollect what belief or impression, if any, I formed at that time concerning the object and purpose of said conveyance; nothing transpired or came to my knowledge that made me think that it was anything other than a bona fide transaction and conveyance to Sargent. I do not think that I considered the sum mentioned in the deed any certain indication of the sum that Sargent had paid, or was about to pay, as it is not uncommon for persons buying to sell again, having, or wishing to have, a larger consideration than the real one put into the deed. My understanding was, that it was a bona fide sale, but on what terms or conditions they settled the purchase money, I never knew.

83. 83d cross answer.—I was acquainted by information at various times, and often communicated to me by Mr. Durant, and once by Mr. Foster, of a dispute or difficulty between him and Joseph Foster and Seth Dewing, relative to the state of their mutual accounts, and of the fact of a reference and award concerning the same. I can't fix the time when I first heard of this dispute, any further than to say that I think Mr. Durant communicated it to me soon after the dispute commenced. I cannot say when the award was made, but I think it must have been either in 1844 or 1845.

84. 84th cross answer.—I recollect that Mr. Durant took the benefit of the bankrupt law. I cannot say whether, or not, I knew that Foster and Dewing failed at that time.

85. 85th cross answer.—It would be impossible for me to say what property Mr. Durant owned at any particular period so long ago. I do recollect that up to the period at which he sold to Sargent, and to the period when Sargent sold to me, he owned more or less horses, carriages, cows, and swine; also some machinery that had been taken out of the paper-mill, which he told me he had sold, or was about to sell, to a gentleman in Lowell, I think. I think that at the time I bought the estate of Sargent, Mr. Durant had disposed of his team-horses, retaining not more than one or two carriage-horses. I cannot say whether, or no, the property I have named was ever mortgaged. I don't think I ever heard of any mortgage. He had an income from some real estate, the fee of which was in his wife, consisting of about twenty-five acres, with two dwelling-houses on it, comprising what they called a farm, also including about six acres of peat meadow land, part of which he cultivated and cut peat therefrom for heating the engines in the paper-mill, and other purposes. This is all the real and personal property Durant owned, to my knowledge, at the period I have mentioned. I should think the value of the personal property I have named, before he sold his team-horses and carriages, would amount to as much as seven hundred dollars, and the income of his wife's property was worth to him about one hundred and fifty dollars a year, perhaps more.

86. 86th cross answer.—I think that the first knowledge I had of the fact of his going into insolvency was the publication that was given of it in the paper, or otherwise. I don't know whether I saw it in the paper, or a notice of it posted up.

87. 87th cross answer.—Durant often spoke to me of controversies during the pendency of his insolvent case which he was having with his brother-in-law, Foster, a former partner of Dewing; and I think one of the subjects of the controversy which he spoke about, related to his discharge under the insolvent law, which Foster was trying to prevent, or had threatened to prevent. I don't recollect of his speaking of any other creditor than Foster.

88. 88th cross answer.—I have an impression that he failed in one attempt to obtain his discharge; whether he ever obtained it afterwards, or not, I cannot say, but I think he did not get his discharge.

89. 89th cross answer.—I did attend as a witness at a trial or hearing before Judge Wilde, at a court held in Boston, but I cannot give the date of my attendance; the business before the court related to the proceedings in insolvency in the case of said Durant. I was summoned to attend, but don't recollect who summoned me, or in whose behalf, whether plaintiff or defendant. I remained in the court-house during the trial or hearing, but was not called upon to give my testimony.

90. 90th cross answer.—I did attend such a sale as is inquired of.

91. 91st cross answer.—I have no recollection that any person requested or suggested to me anything about attending the sale. Whether they did, or not, I attended it on my own account, and for no other purpose.

92. 92d cross answer.—I have no doubt that while the estate was

advertised, Mr. Durant may have said something to me about it, but I cannot recollect one sentence that he said to me, or I said to him. I'm confident there was not much said by either party.

93. 93d cross answer.—I do not think that Mr. Durant made any or either of the requests inquired of.

94. 94th cross answer.—I attended said auction sale, and after the auctioneer had stated to the audience the property that he was about to sell, and the terms of the sale and matters of that kind, I addressed him and the audience present by saying that I claimed to be the owner of the whole of the estate then and there offered for sale. I informed them when, where, and how I purchased it, and that I should defend it as my own; and if any person saw fit to purchase it under this sale, they must do so at their peril.

95. 95th cross answer.—I have no recollection of hearing any one make a bid except the said Foster, brother-in-law of said Durant. A short time after I made the statement mentioned in my previous answer, I heard him bid a sum which was, I think, five hundred dollars, and I am very confident it was struck off to him on that bid.

96. 96th cross answer.—Mr. Durant at the time of the sale occupied the dwelling-house and the mills; if the mills were running at all at that time, I presume that Mr. Durant was running them. I do not know whose stock he was working, any further than that when he came to me to hire the mill, at two or three various times, I think he at each time stated that he wanted them to work stock for a gentleman in Boston.

97. 97th cross answer.—Mr. Durant never had any lease from me of the premises; the liberty which I gave him to occupy them was verbal. The terms on which he occupied them were, that he should pay all taxes upon the premises, keep them, at least, in as good repair as when I purchased them, and pay the interest on the mortgages during the period that he should so occupy them.

98. 98th cross answer.—I think that at the time I purchased the estate at auction, there was a reserve made in the sale for him to use the mills long enough to work up the stock which he then had on hand, which Mr. Durant stated he thought would require about two weeks; after the expiration of this time he occupied the premises under me upon the terms stated in my last answer, until the time of his agreement wih said Saunders relative to the conditional sale.

99. 99th cross answer.—Mr. Durant did pay the taxes, that is, I think I paid them once to the collector, but that Mr. Durant paid me the amount afterwards. I think Mr. Durant admitted to me at some times when I talked with him about it, that he had not paid, or fully paid, on the mortgages what belonged to him to pay, and at one time I think that he contended that the betterments which he had made on some parts of the machinery of the mill, was as much, or more, than the interest of the mortgages for that period. Whether it was, or not, I never was fully satisfied. I was satisfied that he did more to the mills than keep them in the same repair as when I bought them.

100. 100th cross answers.—I think I inquired something in regard

to Mr. Tenney's mortgage. I don't think I found Mr. Durant had paid any interest on it, after he had hired the mills of me, but that the mortgage was likely to be cancelled, or in part cancelled, by some pledges, or something else, which Mr. Tenney held in his hands, or under his control, which, if done, would be equivalent, as far as I was concerned, to the same sum being paid on the several mortgages. I also made some inquiry in Boston, I think it was of some gentlemen who had charge of Judge Hubbard's papers, with regard to the Hubbard mortgage. I recollect finding the state of that mortgage, so far as I could then ascertain, the same as Mr. Durant had before described it to me. I do not now recollect whether he had then recently paid any interest upon it or not. I think these are the only mortgages that I ever inquired of. I think these inquiries were made in the year 1844.

101. 101st cross answer.—I think I have already stated that I never knew whether, or not, Mr. Sargent paid Mr. Durant the six thousand dollars mentioned in his deed, or what other sum he paid him, or in what other way or manner they settled the consideration named in the deed. I do not think that Mr. Durant ever told, or intimated to me, on what terms they settled it, and I am quite sure that Mr. Sargent never did. I don't think that Mr. Sargent ever passed a word with me on the subject. I know of no cause which I had to believe that there was, or was not, any secret agreement of any kind between said Durant and Sargent. I do not recollect that at that time I had any understanding, impression, or suspicion, with regard to any secret agreement or understanding between Durant and Sargent relative to the purchase of said lands, other than that two sharp men were trading together, each probably looking out for his own interests.

STEPHEN BARKER.

U. S. OF AMERICA,
Massachusetts District.

On the thirteenth day of February, A. D. one thousand eight hundred and fifty-two, by virtue of the foregoing commission to me directed, I caused the deponent therein named to come before me in Boston, in said district, and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories thereto annexed, on that day, and on the following fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-third, twenty-fourth, and twenty-fifth days of said February, to wit, on ten several days, gave the foregoing answers by him subscribed, in my presence; and the same reduced to writing in his presence, by H. L. Hallett, a clerk employed by me for that purpose. And I further certify, that in all things I conformed to the directions for taking said deposition in the foregoing commission contained.

Witness my hand and seal, the day and year aforesaid,

B. F. HALLETT,
Commissioner Cir. Court U. S. for Mass. District.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire,*
U. S. Commissioner for the District aforesaid.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of And. Emerson, Joshua Norton, jr., Luther Crane, all of the city of Boston, and Seth Dewing, of Needham, in said district, witnesses to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence et al., respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either by himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answers of the deponents to each fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al. } In Equity.

Interrogatories in behalf of the plaintiff to And. Emerson, Joshua Norton, jr., Luther Crane, all of the city of Boston, and Seth Dewing, of Needham, in said District.

1. Do you know the parties to the above entitled action, or either, and which of them?

2. Where do you reside; what is your business or occupation; and how long have you followed such business or occupation?

3. State whether or not your business now, or has formerly been, that of a paper manufacturer. If yea, state how long you have followed the same, and in what capacities; whether you have or not had any and what opportunities of becoming acquainted with the value of paper-making, manufactories, machinery, and privileges; whether or not you have owned or had the charge and control of such property; and, if yea, for how long a time; whether or not you have bought or sold such property, or been conversant with the prices at which the same has been sold and bought in this vicinity, or in that of the city of Lawrence.

4. Are you or not acquainted or familiar with the lots of land in said Lawrence described in the paper annexed, marked A? Whether or not did you ever go on to them, or any of them? If so, state where, and whether or not there were at said time any paper-mills and machinery thereon; and whether there were any, and, if any, what water privileges connected therewith.

5. Did you or not ever look at or view said premises, and the mills and machinery thereon, for the purpose or with the view of forming an opinion of their value; if yea, did you form such an opinion or not; and, if you did, what was the value thereof, according to your best judgment?

6. Did you or not ever make any, and, if any, what offer for said premises; and, if so, when and how much did you offer therefor?

7. Were you or not acquainted with said premises, mills, and machinery in the year 1844, and from June to April, 1845? If yea, please declare what their value was at said times, according to your best judgment.

S. BARTLETT, *for Plff.*
By E. D. SOHIER.

A.

A piece of land containing about six acres, with a dwelling-house and barn thereon, bounded northerly by Spicket river, easterly by the county road, and southerly and westerly by land of Merrill Gage.

Another piece of land which lies easterly of the land above described, on the easterly side of said road, containing ten acres, with a paper-mill and water privilege, beginning at a stake and stones on the easterly side of said road, by land of Daniel Merrill; thence easterly by said Merrill's land to Spicket river; thence northerly by said river ten rods; thence easterly across said river to a stake and stones on the easterly side of the river; thence northerly and westerly by the side of said river, including the same, to the stone road to the first bound.

Another piece of land containing about seven acres, lying southerly of the last described, bounded northerly, southerly, and westerly, by land of Daniel Merrill, and easterly by Spicket river, with the paper-mill standing thereon, together with all the machinery in said mill used for conducting the business of paper-making, and conducting the usual business of the establishment.

Also another piece of land containing about half an acre, lying on the easterly side of said river, opposite to the mill, bounded westerly by said river; southerly, easterly, and northerly, by the land of the heirs of Enoch Poor, deceased; also a road two rods wide, leading from said road to the last described premises through land of said Merrill.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al. } In Equity.

Cross-interrogatories on behalf of the defendants to And. Emerson, Joshua Norton, jr., and Luther Crane, of the city of Boston, and Seth Dewing, of Needham, in said district.

First. Are you a creditor of the said Durant; and if so, to what extent? Have you been in his employ, or engaged with or for him in business, or otherwise connected with him, and how?

Second. If you state, in answer to the third direct interrogatory, that you have owned or had the charge and control of the description of property therein mentioned, specify every instance in which you have owned or controlled any such, fixing the time at which you did so, and the location of the property?

Third. If in answer to said third interrogatory you shall have stated that you are conversant with the prices at which such property has been bought or sold in this vicinity, or in that of the city of Lawrence, and have bought or sold the same, please to specify each instance in which you have bought or sold any such property, either on your own account, or as agent for others, fixing the dates and prices, and also every instance in which you have had personal knowledge of any other such purchase or sale, other than information concerning the transaction derived from some other source than your own actual presence at the transaction; and please to state also whether you attach any other meaning

to the expression that "you are conversant with the prices at which the same have been bought and sold," than that you are acquainted therewith from having made such sales on your own account, or as agent for others, or having been otherwise personally present at and knowing to the transactions? And if yea, state what other meaning you do attach thereto, and how otherwise, you understand it?

Fourth. If in answer to the fourth and fifth direct interrogatories, you shall have stated that you are familiar with said lots of land, or that you have ever looked at the same, or the mills and machinery thereon, please to specify how many times you have visited or been upon the said lots of land, and any and which of them, fixing the date of each visit, and the purpose of each; and how many times you have visited the paper-mills thereon, both or either, and which of them, and how long a time you remained in each mill at each visit, and what parts of the machinery you particularly examined, if any, and how, particularly, fixing the date of each visit and its purpose; and state whether said mills, either and which of them, were then in operation? Whether you examined at any of such visits the water privilege, if any, connected therewith, and how, particularly, you examined the same? And if you shall have stated in answer to said interrogatory that you visited said premises, and the mills and machinery thereon, for the purpose of forming an opinion of the value of the same, and that you did form such an opinion, please to fix the date of the visit made for the purpose of forming such opinion, and at which the same was formed, and at whose request you did so, as nearly as you are able? And if you shall have stated in your said answer the value then placed by you on said premises, and mills and machinery, please to state how many parcels of land, and the description of each, you had previously purchased or sold in said Lawrence, or its vicinity, on your own account, or as an agent for others, and how many purchases or sales of such lands you had had any personal knowledge, other than information derived from the statements of others, fixing the date of each such sale or purchase; specify the value set by you on the lower mill and machinery, and the water privilege, in such estimate, and the value of the land connected with said lower mill; and in the same manner, specify the value set by you in such estimate upon the land connected with the upper mill, and also the values of the said mill and machinery, and water privilege, giving the values annexed by you to each of the said subjects of inquiry separately; and in particular, specify the value set by you on the Fourdrinier machine and its appurtenances, in said upper mill? State also the values set by you upon the parcel of land, with the dwelling-house thereon; and specify, also, purposes with reference to what you valued the said land with said dwelling-house thereon, and the other lands connected with said mills?

Fifth. If in answer to the sixth direct interrogatory, you shall have stated that you made any offer for said premises, state to whom the same was made; the date as near as you can; who was present; what part of said premises it embraced; whether the whole or a part of said lands,

mills and machinery, and if a part, what part; whether for repurchase or a lease, and if the latter, whether any and what repairs were to be made by you, or by whom; state all the particulars of such offer as distinctly as possible, and if it was for a purchase, declare whether you expected to pay in cash, or how otherwise, and had the means of doing so at the time?

Sixth. If, in answer to the seventh direct interrogatory, you shall have stated that you were acquainted with said premises during said year 1844, and prior to 1845, state for how long a time prior, and explain your meaning in the use of the term "acquainted." and, if you shall have undertaken to fix their value as inquired of, fix the precise date to which such opinion relates, and specify the particular value of each of said lots, water privileges, and of the mills and machinery, as particularly as you were required to do in the fourth cross-interrogatory, in relation to said several items; and also all your transactions in buying and selling real estate in said Lawrence, and personal knowledge of such purchase and sales; and your personal acquaintance with purchases and sales of mills, machinery, and water-power, as particularly as by the third and fourth cross-interrogatories, in case you have not already made such a particular statement in your answer to said cross-interrogatories; specify how you value the land, whether to be used for building and other purposes, or only in connection with said mills; whether you have any personal knowledge of the extent and value of said land, mills, machinery, and water privileges, derived from your own personal investigation other than from information and from others; and if your knowledge is in whole or in part derived from others, state from whom derived, and when, and what such information was; and state, also, particularly whether your opinion, as now expressed, of the value of said premises, is not an opinion founded in whole, or in part, upon information as to the extent or value of said lands, mills, machinery, and water privileges, or some of them, and which of them, communicated by some other person; and, if so, by whom; and what has been stated to you on the subject; and whether you know anything of your own knowledge of the cost of such land, mills, machinery and privileges, and what is the extent of your knowledge thereof; and whether the value affixed by you to such mills and machinery is not in any, and what, degree founded upon what you suppose the same should have cost, and not upon actual personal knowledge of the cost thereof, or how otherwise? Declare whether, or not, such property, as said mills and machinery, does not depreciate rapidly from the first cost, and does not require frequent and expensive repairs; and whether the same is not subject to frequent and considerable fluctuation in value; and whether, always, per centage upon the capital invested must not be earned to render the business profitable in the long run.

Seventh. Have you conversed with the said Durant, when and how often, relative to the matters which have now been inquired of, or any of them; and have you heard any statement from him respecting the

cost or value of his paper-mills, or other property inquired about, or respecting the amount or nature of his claims against the Estex Company?

Eighth. How long have you known him? Have you been on terms of friendly intercourse with him during that time? How many years is it since you first knew him to be in embarrassed circumstances?

W. H. GARDINER, *for Defts.*
By C. G. RIPLEY.

Additional Cross-interrogatories to And. Emerson, separately.

1. State, unless you have already stated it in answer to the foregoing interrogatories, or any of them, whether, or not, you formerly made an appraisement of the value of said upper mill and machinery, at the request of the Essex Company. If yea, when?

2. What was the object of such estimate, and what investigation of said mill and machinery did you make for the purpose; at how much did you value said mill, and at how much the Fourdrinier machine therein, and the other machinery? Give the particulars of said estimate, as you then made it. Were, or were not, any, and if any, what repairs necessary to put said mill in running order; if yea, at what did you estimate the same? Did you, or not, endeavor to sell said Fourdrinier machine for said company? If yea, what was the highest sum offered therefor?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al.

Additional Direct Interrogatories to be proposed to And. Emerson in behalf of the Plaintiff.

1. If, in answer to the defendants' first interrogatory proposed to you separately, you say that you did formerly make such an estimate as is therein inquired about, at the request of the Essex Company, please declare the time when such estimate was made; whether, or not, the mill and the machinery were then in running order; and if they were not, then say how long, or about how long, they had remained without being used.

2. Please declare whether the machinery mentioned in the second of the defendants' said separate interrogatories was, or was not, much deteriorated and injured by having laid for a long time without use when you appraised the same for the said Essex Company. Were you, or not, desirous of buying said machinery at said time, or of hiring, or of negotiating for the same?

3. If, in answer to the said second separate interrogatory of the defendant, you say you endeavored to sell the Fourdrinier machine for said company, please declare whether, or not, said machine had, or not, been injured from want of use at said time?

4. Is, or not, the machinery used in paper-mills liable to injury from not being used? If yea, to what extent?

5. Had you, or not, viewed and looked at the said mill, premises, and machinery, and formed an opinion of their value, prior to your said examination, made at the request of the Essex Company, and inquired about in the said separate interrogatories?

6. If you say that you endeavored to sell said machinery as inquired about in the said second separate interrogatory, declare whether or not the same had then been removed from the mill, and whether that fact did not diminish its value, and whether or not this fact rendered said machinery unsaleable, and why?

7. What would the value of this machinery have been if sold to be used in said mill, as compared to its value if sold to be carried away?

8. What would it have cost to have furnished said mill with other machinery equally good?

SIDNEY BARTLETT,
By E. D. SOHIER, *Pl'tiff.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE and al. } In Equity.

Additional Cross-interrogatories on the part of the Defendants to And. Emerson.

1. If you shall have stated, in answer to the 7th additional direct interrogatory, that the value of the machinery there inquired of would be, if sold to be used in said mill, as compared with its value if sold to be carried away, please to specify precisely to what parts of the machinery in said mill your said answer is intended to relate, and specify the items which go to make up any difference in value stated by you, and the grounds of your said opinion?

2. If you shall have given any sum in your answer to the 8th interrogatory, as being the cost of other machinery for said mill, specify to what parts of the machinery of said mill you refer, and whether such sum is intended to cover the cost of new machinery equally fitted for said mill, or of machinery which had been used as long and been subject from whatever causes to the same wear and tear as the machinery inquired of.

3. Was not your said estimate, at the request of the Essex Company, an estimate of machinery then in said mill, and upon the supposition that said machinery was to be used and run in said mill by said company or its lessee, and did not you then estimate the rent which said

company, if it made the repairs necessary to be made, should receive, to render the runnings of said mill of any profit to them; and if so, what was said rent, or how otherwise did you estimate said machinery? If in your answer to the 6th interrogatory, you have used the word "unsaleable," state what you mean by said expression, and to what precise parts of said machinery you apply.

4. If you have undertaken to say how long the said mill and machinery had remained without use prior to your estimate aforesaid, state how you know the fact to be as you state it, and if you have stated that said machinery mentioned in said 2d interrogatory was, at the time of your appraisal, deteriorated by having lain a long time without use, state how you know the same had remained a long time without use, and how long, and whether you speak from any personal knowledge of your own, or from information derived by others, and what the precise sources of your knowledge are?

W. H. GARDINER, *for Def'ts.*
By C. G. RIPLEY.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

I, And. Emerson, of Boston, in the district of Massachusetts, forty-nine years of age, on oath depose and say, in answer to the interrogatories in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I know them both well.

2. 2d direct answer.—I reside in Boston. I am in the paper and paper stock business; formerly been engaged more in the manufacture of paper. Have been in this business in all fifteen or twenty years.

3. 3d direct answer.—I now have an interest in manufacturing paper, but mostly as agent. I have been for the last twenty years engaged in all the branches of paper-making; have both worked as operative, and have superintended as agent and owner. I have built five paper-mills and have repaired three. I have been acquainted with all the improvements, and invented myself some of the most important ones. I have for the last twenty years been engaged in the buying and selling of machinery for making paper. I have been conversant for the last ten years with the prices at which such property has been sold, not only in this vicinity and in that of the city of Lawrence, but all over the New England States, and have been frequently called upon to appraise such property.

4. 4th direct answer.—I am not familiar with the lots as described, but I presume that these are the lots on which the paper-mills stood, of the larger one of which I appraised the machinery for Mr. Storrow, in February, 1847, I think. The mill, the machinery of which I appraised, was one of two mills situated on a stream a little distance above the company's machine shop, and a short distance east of Mr. Durant's house, where he then resided. The dam of the mill referred to was a short distance above the mill, and there was, I considered, a very good water-power there.

5. 5th direct answer.—I did, in Feb., 1847, I think it was, examine the upper or larger mill for the purpose of appraising the machinery, and to make an estimate of what it would cost to repair it, and what it would rent for and I should be willing to pay for it, as I had some idea of hiring it. After this appraisal Mr. Storrow requested me to sell the machinery; he had concluded to sell it. The estimate I made of the machinery in the upper mill was about four thousand dollars; the estimate of the water-power to run that mill, ten thousand dollars; but the machinery had been laying for some time and was in a very bad condition indeed, and some parts of it were missing, and I recommended that it should be removed at once to keep it from further injury. If the machinery had been in running order, it would have been worth double, probably. I made no estimate of the real estate. I made no estimate of the value of the smaller mill. I think I did not go to that mill.

6. 6th direct answer.—I have no recollection of having made any offer for said premises.

7. 7th direct answer.—I was not acquainted with the said premises at the dates inquired of.

And in answer to the Cross-interrogatories proposed by counsel for D'fts.

1. 1st cross answer.—I am no creditor of Mr. Durant. Have never been in his employ or engaged in business with him in any way.

2. 2d cross answer.—I cannot fix dates precisely; but in 1830, I think, I owned a paper-mill in Pepperill, in company with Nathaniel Green, on the Missistiset river, which we rebuilt. Then, in about 1835, I built two mills, both on the Nashua river, at Babatasset village—both of which were burnt; and in 1836 or 1838 I rebuilt a very large one, which went into the hands of a corporation, for which I acted as agent, and made large improvements in putting in machinery. In about 1843 I built an entire new mill in West Groton, on the Squanicook river. In 1845 or '7 I leased a new mill, building, and water-power at Sacarappa, West Brook, Maine, on the Congden river, and then put in all the machinery, wheels, and fixtures—that is, I built everything but the building. Then, in 1847, I leased another building in the same way, at the same place, on the opposite side of the river; and also built a part of it new, and put in paper machinery, and put it to running. This is the last paper-mill I built, though since that time I have bought, as agent for others, considerable machinery.

3. 3d cross answer.—The mill that I sold to the Pepperill Manufacturing Company, alluded to in my preceding answer, was for about thirty thousand dollars, as near as I now recollect, and included I think two-eighths of the water-power, two cylinder machines, and six engines. I sold this about 1838. The mill I built at Groton, I cannot now recollect what I sold it for; the value of it, mill and real estate, was estimated, I think, at twelve or fifteen thousand dollars—it contained two engines and one cylinder machine; I sold this mill somewhere about

1845. The mill at Sacarappa I sold in 1847 or 1848; it cost from twenty-two to twenty-four thousand dollars, separate from building and water-power; it contained one sixty-two inch Fourdrinier machine, one cylinder machine, thirty-six inches, and five engines. I sold all of it—but one machine and one engine, which I moved—for about the same as it cost me. The other mill, on the opposite side of the river, was burnt. The cost of the machinery of that mill was from seven to ten thousand dollars; some parts of it were second-handed; it contained two engines and one cylinder machine. All my knowledge and experience in the price of paper-making machinery has been derived from personal experience, and not from hearsay. I have bought and sold such machinery for the last twenty years—it has been my business.

4. 4th cross answer.—I have not attempted to set any value upon the lots alluded to. I visited the upper mill sometime about 1838; I was riding by, and went into it for about five minutes, but did not examine it or go over it at all. In February, 1847, by request of Mr. Storrow, I examined the upper mill, for the purpose of making an estimate of the value of the machinery. I remained upon the premises perhaps an hour with Mr. Storrow. I examined each part of the machinery, and appraised it separate. I at that time made an estimate upon the water privilege—what I thought it would be worth to let. I don't recollect now that I ever went into the lower mill. At this time, when I visited the upper mill, it was not in operation. Soon after this I was requested by Mr. Storrow to find a purchaser for the machinery. I then recommended him to remove the machinery into another building, and have it put in better order, as it was in bad condition for selling as it then lay, and some parts were missing. I engaged Col. Shattuck, of Pepperill, millwright, to move the Fourdrinier machine and fixtures; and he did move it into another building. Soon after this I called again, with Joshua Norton, for the purpose of selling the Fourdrinier machine to him; and he made me an offer of twenty-five hundred dollars on time. I think I called at the upper mill once after that—about a month or so afterwards—and stayed a few moments; once prior to this last time, I now recollect, I called with Mr. Hoskins, of Gardiner, Maine. I think his offer for the Fourdrinier machine was about a thousand dollars; I did not think this a fair offer, and therefore did not accept it. In my answers alluded to, I have merely stated the opinion I formed of the value of the machinery. I did not set any value upon the real estate or the water privilege, any further than I have already stated. The lots of land referred to were never pointed out to me. I have never bought or sold real estate in Lawrence or vicinity. I never appraised the lower mill, or the water privilege connected with it, that I now recollect of, though I may have said something about it to Mr. Storrow. The Fourdrinier machine, I think, I appraised in February, 1847, as it then stood, at about twenty-two hundred dollars; the whole machinery I appraised at about four thousand dollars.

5. 5th cross answer.—I never made any offer, to my recollection, to any one in regard to these premises.

6. 6th cross answer.—The greater part of this question I have already answered as fully as I can; with regard to the depreciation of machinery, I will say that such machinery depreciates in value very rapidly, if left standing, more so than other machinery; in consequence of its being more exposed to wet and damp, it requires constant and very expensive repairs, and is subject—some parts of it, not the whole—to frequent and considerable fluctuation in value. Per centage upon capital invested must always be earned, according to my experience, in every kind of business, in order to render it profitable in the long run.

7. 7th cross answer.—He has conversed with me occasionally in regard to the matters inquired of; I have heard him say that his paper-mills cost him somewhere about forty thousand dollars, I think. I have heard him say that he had a claim against the Essex Company, worth one or two hundred thousand dollars; but I cannot recollect anything very definite about any of his conversations.

8. 8th cross answer.—I have been on terms of friendly intercourse with Mr. Durant. I never was intimate enough with Mr. Durant to know about his affairs.

And in answer to additional Cross-interrogatories proposed by Defendants.

1. 1st additional cross answer.—I have already answered this question.

2. 2d additional cross answer.—I have already answered this question also.

And in answer to additional Direct Interrogatories proposed by Plaintiffs.

1. 1st additional direct answer.—From the appearance of the machinery I should say it had not been run for some considerable time.

2. 2d additional direct answer.—It was much deteriorated at the time I appraised. I had some idea of hiring at that time, as I have before stated, but nothing definite was done or said to that effect that I recollect of.

3. 3d additional direct answer.—The Fourdrinier was injured for want of use, badly injured too.

4. 4th additional direct answer.—It will rust out much faster than it will wear out. It depends upon the care that is taken of it; in the situation this was in, it would have been ruined in a short time.

5. 5th additional direct answer.—I had not.

6. 6th additional direct answer.—The object of moving it was to put it in a saleable condition and prevent its rusting. The moving of it did not diminish its value. If the mill had been repaired at that time, it would have been as well to have had some parts, but not all, remain in the mill.

7. 7th additional direct answer.—It would have been worth more money to have remained in the mill; it's difficult to say how much more,

as probably the driving part and fixtures would have to have been changed to have gone into another place.

8. 8th additional direct answer.—From twenty to twenty-five thousand dollars would have put entirely new machinery into that mill. Second-handed machinery like what I saw there would cost a little more than half as much.

And in answer to additional Cross-interrogatories on the part of the Defts., to And. Emerson.

1. 1st additional cross answer.—Water wheels, cisterns, engine tubs, and fixtures connected with them, would not be worth over half price to move away. The Fourdrinier machine and some other parts of the machinery might be worth nearly as much; with the exception of the driving power and vats—they would not be worth half price. This takes from one-third to one-half from the original cost of the Fourdrinier machine. The ground for my opinion is my experience and what I saw of the machinery.

2. 2d additional cross answer.—In my answer to the interrogatory alluded to, I stated what I considered to be the value of new machinery, and also of the value of the machinery there.

3. 3d additional cross answer.—My estimate upon the machinery was made upon the supposition that it was to be run in that mill. I estimated the water privilege at six per cent. on ten thousand dollars. The mill, machinery, and expense of repairing the same, I estimated at 12 per cent. upon their then value; this was my estimate for renting the mill. This estimate was made upon the supposition that the lessee should keep the mill in repair. In my answer to the 6th interrogatory, I refer to that part of the machinery that could be conveniently moved.

4. 4th additional cross answer.—I have no knowledge how long the machinery had been stopped, except from its appearance; judging from that, I should say it had not been run for a long time.

A. EMERSON.

B. F. HALLETT, *Commissioner.*

I, Seth Dewing, of Needham, in the district of Massachusetts, sixty-three years of age, on oath depose and say, in answer to the interrogatories in the commission hereto annexed, in behalf of the plaintiff—

1. In answer to the first interrogatory.—I know Durant. Do not know Lawrence.

2. In answer to the 2d interrogatory.—I reside in Needham, and carry on a farm. I have been connected with farming, and have carried on farming for nearly twenty years. I have been a deputy surveyor of lumber in Boston for about seven years.

3. In answer to the 3d interrogatory.—I was a partner with Adolphus Durant and Joseph Foster in 1836, in the manufacture of paper; from the spring of 1836 to the spring of 1837. I followed that business about a year. I managed the money part, and did the financial

business of the company. I did this in Boston, where I took care of the concern. I occasionally visited the mill at Methuen. My only opportunities for becoming acquainted with the value of paper-making machinery and privileges, aside from hearsay, was during the time that I was in the business. I know that the Fourdrinier machine in the mill at Methuen cost when it was up nearly five thousand dollars. I know it, because I paid the bills, the most of them at least. I was a part owner of the Fourdrinier machine; it was company property. I have never had the charge or control of such property. I am not conversant with the price of such property. When we dissolved partnership the company sold the machine to Durant, and I took a mortgage of three thousand five hundred dollars for the whole.

4. 4th direct answer.—I am not very familiar with the lots alluded to. I have been on to all of them except the half-acre lot. In 1836 and '37 I was on them, and have been on some of them since. When I first knew these lots in 1836, there was one paper-mill on the seven-acre lot, and another on the ten-acre lot; both contained machinery. There was a water privilege connected with each mill.

5. 5th direct answer.—I did examine them for the purpose of forming an opinion of their value. In 1836 or 1835 I went and examined the mills; I did on Mr. Durant's representation form an opinion of their value. From the representation which Mr. Durant made me of the profits of the business at the time, I formed my opinion of the value of the property, and not from what it would bring in the market. I thought the property might be worth fifteen thousand dollars, or more, to occupy and use, but not to sell. This answer applies only to the upper mill. I had nothing to do with the lower mill.

6. 6th direct answer.—I never made any offer for the premises that I now recollect of.

7. 7th direct answer.—Before the Essex Company located there I considered the estate of far less value than I did in 1836, for I had lost a good deal of money by the mill. But after the Essex Company located there they rose very much in value.

And in answer to Cross-interrogatories proposed on behalf of Defendants.

1. 1st cross answer.—I am not a creditor of Mr. Durant.* I was in partnership with him from 1836 to 1837, as I have already stated.

2. 2d cross answer.—I never had any charge or control of this description of business; whilst in business with Mr. Durant I gave my attention to the money department.

3. 3d cross answer.—I never have bought or sold, either as agent or otherwise, any such property any where, except the Fourdrinier machine, which was bought by the company.

4. 4th cross answer.—I never formed any opinion of the value of the property referred to, including the lots and mills, other than I have stated in my 5th direct answer. I never attempted to estimate the market value of the property, but only its value for carrying on the

paper-making business. The Fourdrinier machine cost about four thousand dollars, and the transporting and placing it with its fixtures about one thousand more.

5. 5th cross answer.—I never made any offer for the premises. In the year 1845, I think, they were sold at auction by Durant's assignee, and bought by my partner, Foster, for him and myself, at about six hundred dollars over the incumbrances.

6. 6th cross answer.—There is nothing in this question which I can answer, any further than I have already done.

7. 7th cross answer.—I have frequently conversed with Mr. Durant relative to the matters inquired about. I have heard statements from him respecting the cost and value of his paper-mills and other property. I have heard him speak of the nature of his claims against the Essex Company.

8. 8th cross answer.—I have known and been well acquainted with Mr. Durant since he was a child. I have had a lawsuit with him. For quite a number of years prior to 1835, from the time he left Newton to 1835, I had no knowledge of him. In 1834 or 1835 he came to me for assistance, and that is the first I knew of his being in embarrassed circumstances.

SETH DEWING.

B. F. HALLETT, *Commissioner.*

I, Luther Crane, of Boston, in the district of Massachusetts, forty-seven years of age, on oath depose and say, in answer to the interrogatories in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I know Mr. Durant; do not know the other parties.

2. 2d direct answer.—I reside in Somerville, and do business in Boston. I am a paper-dealer and manufacturer. I have been in the business twenty-one years.

3. 3d direct answer.—My business now and for twenty-one years has been that of a paper manufacturer; prior to that time I worked in paper-mills as an operative for about nine years. I bought a paper-mill when I went into business twenty years ago. I have bought and sold a large amount of paper-making machinery whilst I have been in the business. Within two or three years past have bought and sold a good deal. In 1843 my brother and myself bought two paper-mills in Middleton, one large and one small one. Middleton is about ten miles from Lawrence. One of these mills had no machinery in it, and the other had not a full complement; the mills had been standing idle for a year when we bought them. 1842 was a very dull year for the paper business. It cost us twelve thousand dollars to get one of the mills into running order; the other we have never done any thing with, as the water-power is not sufficient. We bought these mills at a very low price, as the times were very dull; it was so considered when we bought them. I also bought a small mill in 1836 or '37, on the Worcester turnpike; it had a very small water-power; I paid thirty-

one hundred dollars for it, and sold it in '47 or '48 for thirty-eight hundred dollars. It was not much of a mill—a small affair. I sold the mill that I bought when I first went into business, my half I mean, for I had a partner, at the *the* rate of ten thousand dollars. This mill cost six thousand when I bought it. I sold it in 1834 or '35. The mill could not be bought now for twenty thousand dollars. It is generally estimated that a full water-power for a four-engine mill, if well situated as to a railroad or a market, is worth ten thousand dollars.

4. 4th direct answer.—I never went on the lots alluded to but once; that was in 1845 or '46. It was the summer when they first began to build the dam at Lawrence across the Merrimack. The paper-mills were then standing still; there were two mills, a larger one and a smaller one. There was a Fourdrinier machine and drier and boiler in the larger mill. I don't recollect about the smaller mill; know there was machinery there. I noticed particularly the machinery in the large mill; thought it was good machinery; it looked very well indeed. I could not tell any thing about the water-power there; know nothing about it except from hearsay.

5. 5th direct answer.—I never looked at them for the purpose of forming an opinion of their value, and did not at the time form an opinion of their value.

6. 6th direct answer.—I never made any offer.

7. 7th direct answer.—I was not acquainted with them at the time.

And in answer to the Cross-interrogatories proposed by the Counsel for Defendants.

1. 1st cross answer.—Mr. Durant is owing me three hundred and thirty dollars, borrowed last June or July. I never had any business connection with him.

2. 2d cross answer.—I have already answered this in my third direct answer.

3. 3d cross answer.—I have already stated in my direct answers all the purchases of this kind that I have ever made, either for myself, or as agent for others.

4. 4th cross answer.—I never saw the property but on the occasion alluded to in my fourth direct answer. I did not go on for the purpose of forming an opinion. The mills were not in operation at the time. I did not form an opinion of the value of those mills, but I formed an opinion that if the mills were in good running order, and there was water-power enough for the machinery, they would be worth forty thousand dollars. In this estimate I did not include the value of the land any more than enough to build the mills on.

5. 5th cross answer.—I made no offer for the premises.

6. 6th cross answer.—I was not acquainted with the premises prior to 1845. I have already stated that I fixed no value upon the lots of land alluded to. With regard to the depreciation of such property, I will say that paper-making machinery depreciates rapidly, and great difference is made by the care which is taken of it; some mills will

wear out more than others. If a mill is well taken care of the depreciation will be less.

7. 7th cross answer.—I have conversed with Mr. Durant relative to the matters inquired of; not often; I have heard him say that his two mills cost him forty-seven thousand dollars, and that is not as much as the two mills at Middleton cost. I have heard him speak of his claim against the Essex Company. Never heard him mention the amount.

8. 8th cross answer.—I have known Mr. Durant ever since I was a boy—been on friendly terms with him. I never knew much about Mr. Durant's business; know that he has been embarrassed, but to what extent I don't know.

LUTHER CRANE.

B. F. HALLETT, *Commissioner.*

I, Joshua Norton, jr., of Boston in the district of Massachusetts, forty-six years of age, on oath depose and say, in answer to the interrogatories in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I know Adolphus Durant and Samuel Lawrence.

2. 2d direct answer.—I reside in Boston. I am in the paper business; have been in it twenty-five years.

3. 3d direct answer.—I have been a paper manufacturer for seven or eight years. Before that I only supplied mills, and sold the paper made by them. I have bought paper-mills and paper machinery. I have owned and had the control of such property. I have bought paper machinery in Lawrence. I have bought a paper-mill in the vicinity of Boston.

4. 4th direct answer.—I have seen the lots alluded to. I have been on to all of them a great many times, from the year 1829 to the year 1850. It is about a year since I was there; during all the time that I have known the place there have been two paper-mills there. I know that in one of the mills the machinery was in it up to 1849. In the smaller mill I don't know about the machinery. There were two water privileges there; one of them was a very good privilege.

5. 5th direct answer.—I cannot say that I ever went on purpose to put a value on the property. In looking at the property there, I always considered that you couldn't build such a mill as the larger one, and put the machinery in, short of twenty or twenty-five thousand dollars. I valued the large mill at twenty-five thousand dollars. I never set any value upon the smaller mill. I fix this valuation for about the year (1837) eighteen hundred and thirty-seven.

6. 6th direct answer.—I made an offer for the movable machinery in the upper mill, to be taken out at one time, in 1848, I think. The machinery had been standing for some time, and I offered rising twenty-five hundred dollars for it. This included chiefly the Fourdrinier machine.

7. 7th direct answer.—I never put any value upon the property except as a paper-mill; when the city was located there, and the land speculation commenced, it increased tenfold in value—yes, more too; but I kept no account of this.

And in answer to Cross-interrogatories proposed by Counsel for Defendants.

1. 1st cross answer.—I am no creditor of Mr. Durant's. I have never been in his employ. I have done business with him, but no other connection with him. Mr. Durant did owe me money, but he paid me principal and interest a long time ago.

2. 2d cross answer.—In 1844 I bought a paper-mill in Hampden, Maine; it cost me about eighteen thousand dollars. It was burnt up, and I rebuilt it in 1846. I now own it; it has cost me thirty-three thousand dollars. I bought a small old mill at Bridgewater, in 1850; it cost me eight thousand dollars. I have had the control of several mills at different times, by stocking them, and selling what they manufactured.

3. 3d cross answer.—I have never bought or sold any mills in the vicinity of Lawrence; there are none there that I know of. I negotiated for a mill at Leominster, Mass., in 1845, for another person, for sixteen thousand dollars, and laid out about five thousand to put it into repair. I know by report and conversation with the parties interested, the prices at which several mills have been bought and sold in the vicinity of Boston, at different times. I value the large mill from the experience I've had in the business, and what I have heard of other property being sold at.

4. 4th cross answer.—I have been into the mills probably fifty times during my life. I never went for the purpose of putting a value upon the mills; but I did form an opinion of the value of the larger mill from what similar property had cost me, and what I know it has been sold for. I never appraised the lots of land alluded to, or the water privileges. In the year 1837, as I have before stated, I offered twenty-five hundred dollars for the Fourdrinier machine and some other little things that went with it, of no particular value. At that time a new machine was valued at about four thousand dollars. I never valued the dwelling-house lot.

5. 5th cross answer.—I never made any offer, except for the movable machinery in the large mill. That offer was part in cash, and part in good notes with interest.

6. 6th cross answer.—I have not attempted to fix any value upon the real estate. I have already fully stated my opinion of the value of the larger mill and machinery. Property of this kind is like all other manufacturing property, but I do not think quite so fluctuating in value as others; the business is not so fluctuating as others. The repairs on a Fourdrinier machine are very little; the repairs upon the other parts of the machinery are considerable. I think it requires a profit to render property of any value.

7. 7th cross answer.—I have conversed with Mr. Durant several times. I have never heard any statement from him relative to the cost of his paper-mills or other property; he has told me the amount of his claim against the Essex Company; I never paid any particular attention to it; rising a hundred thousand dollars, I think he said.

8. 8th cross answer.—I have been on terms of friendly intercourse with Mr. Durant over twenty years. He was in embarrassed circumstances somewhere about 1830, I think. He then owed me; he afterwards paid me principal and interest. I have traded with him since, and he has always paid me. I never lost a cent by him in my life.

JOSHUA NORTON, JR.

U. S. OF AMERICA,
Massachusetts district, Boston, ss:

By virtue of the foregoing commission to me directed, I caused the deponents therein mentioned to come before me in said Boston, in said district, to wit: And. Emerson on the ninth day of April, Seth Dewing on the thirtieth day of April, Luther Crane on the fourth day of May, and Joshua Norton, jr., on the seventh day of May, all in the year one thousand eight hundred and fifty-two; and they being then and there severally duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories annexed to said commission, gave, on the aforesaid days respectively, and the said Emerson also, on the twelfth and thirteenth of said April, the foregoing answers by them severally subscribed in my presence; and the same were reduced to writing in their presence, severally, by H. L. Hallett, a clerk employed by me for that purpose. And I further certify, that in all things I conformed, in taking said several depositions, to the directions in said commission contained.

B. F. HALLETT,
Commissioner Cir. Court U. S. for Mass. district.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire,*
U. S. Commissioner for the district aforesaid.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Josiah G. White, of Methuen; Samuel Whitwell, and Benjamin Seaver, both of Boston, and Stephen Webb, of Salem, all in said district of Massachusetts, witnesses to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant, in equity, versus Samuel Lawrence & al., respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination, as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness, the honorable Roger B. Taney, at Boston, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents while giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answers of the deponents to each, fully and clearly.

(Copy.)

METHUEN, *Jan'y 6th*, 1844.

To ADOLPHUS DURANT:

Your real-estate tax for the year 1843 is - - - -	$37 44
Cash for advertising, &c. - - - - - -	1 88
	$39 32

Received payment by Stephen Barker, esq.

(Sd.) J. G. WHITE, *Col. and Treas.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories to be proposed in behalf of the Plaintiff, to Josiah G. White, of Methuen.

1. Were you, or not, ever a collector of taxes in the town of Methuen? if yea, during what years were you such a collector?

2. Look at the receipt now shown you by the magistrate, and declare whose signature it bears, and in whose handwriting it is; and declare whether the tax therein mentioned was, or was not, paid by Stephen Barker?

3. If you undertake to say that said tax was not paid by said Barker, please explain why the fact that he did pay said tax was set forth in said receipt?

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Cross-Interrogatories by Defendants to Josiah G. White, of Methuen.

1. Have you not been previously examined in this cause?

2. Have you not, since your previous examination aforesaid, been talked with by said Durant, respecting your testimony? Did not said Durant inquire whether you testified that you received the money for the tax assessed on his real estate in 1843 from him, or did not you state to him that you had so testified?

3. Did not Durant then say, that it was not himself, but Stephen Barker, who paid the money to you for that year; and that he, Durant, had the receipt which you gave Barker, and which was handed to him by Barker, and that he would bring it to you, and convince you of your mistake, or words to this substance and effect; and did he not thereafter produce to you the receipt, a copy of which is annexed; and did you not thereupon explain, in addition to your testimony already given, that the money was received by you from said Barker?

4. Was it not made known to you by said Barker, when he paid said money, that he paid it on Durant's account, and at his request; please to state your recollection as to what took place, and was said by Barker at the time of such payment?

5. Had you previously requested said Durant to pay said tax, and whether or not did he promise to pay the same, and when?

C. G. RIPLEY, *for Defd'ts.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE. } In Equity.

Interrogatories to be proposed, in behalf of the Plaintiff, to Stephen Webb, of Salem, in the County of Essex.

1. What was your business or occupation during the year 1845? If you say you were cashier of a bank, declare of what bank?

2. Declare whether or not the said bank, at any time during said year, held a mortgage made to them by the plaintiff, of any real estate, situated in the then town of Methuen? If yea, please declare whether or not said mortgage was assigned by said bank during said year; and if you say it was, declare to whom it was so assigned.

3. Declare in whose possession you last knew said mortgage and said assignment to be.

4. Was said mortgage so assigned with or without the request of the plaintiff? If you say it was assigned at his request, declare whether said request was or was not in writing; and if you say it was in writing, annex said writing, or a copy thereof, to your answer.

5. Declare whether or not said assignment would have been made without the said request of the plaintiff.

[Objected to as incompetent and irrelevant. C. G. RIPLEY, for defendants.]

6. How long had said mortgage been held by said bank, and what was the sum secured thereby?

SYDNEY BARTLETT,
By E. D. SOHIER.

Cross-interrogatories to Stephen Webb, of Salem.

1. De bene esse. If you undertake to answer the fourth direct interrogatory, declare how you know the fact to be as you state it.

C. G. RIPLEY, *for Def'ts.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE. } In Equity.

Interrogatories in behalf of the Plaintiff to Samuel Whitwell and Benjamin Seaver.

1. Please to state what your business or occupation was during the years 1846 and 1847?

2. Please to say whether, or not, at any time or times, you made or conducted any sale or sales of any lands in the town of Lawrence, formerly called Methuen, during either of said years? If yea, declare how many of such sales you conducted, and how such sales were made, whether at public auction, or otherwise?

3. Have you any plan or plans of the lands sold at such sale or sales? If yea, please annex such plan or plans, or true copies thereof, and declare the several prices at which each of the lots thereon were sold?

4. For whom, and in whose behalf, were such sales made?

S. BARTLETT.
By ED. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

I, Josiah G. White, of Methuen, in the district of Massachusetts, on oath depose and say, in answer to the interrogatories contained in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I was, in 1842, '43 and '44.

2. 2d direct answer.—The receipt annexed, marked A, is in my handwriting, signature and all. The receipt says it was paid by Stephen Barker, and I presume it was so paid.

3. 3d direct answer.—I have stated that it was paid by Barker.

Cross-interrogatories answered by Josiah G. White.

1. 1st cross answer.—I have.

2. 2d cross answer.—Durant has talked to me. When I gave my evidence the first time, I testified that Durant paid me the money, and mentioned that to him. He told me that he thought he had a receipt among his papers to show that Barker had paid the tax. I told him that if he had such a paper, I had been mistaken in my testimony; afterwards he came and brought the receipt annexed, and asked me if that was my handwriting; I told him that it was, and then went before Commissioner Woodbury and requested that my testimony might be altered. Before going to Mr. Woodbury, I saw Barker and asked him if he ever paid a tax for Durant; he said he believed he did one. He did not recollect the year. I then told him of the receipt Durant had shown me, and he said he supposed that must be the one; that he supposed that when Durant paid him the money he handed the receipt to him.

3. 3d cross answer.—This question is answered in my preceding answer.

4. 4th cross answer.—I have no recollection what took place at the time of the payment. I recollect that previous to that I had spoken to Durant about paying his taxes. I have no recollection what Barker said at the time it was paid.

5. 5th cross answer.—I had previously requested Durant to pay his taxes, and think it must have been advertised from the date of the receipt. I think that all not paid at that time had been advertised. He promised to pay it. I cannot recollect when.

JOSIAH G. WHITE.

B. F. HALLETT, *Commissioner.*

A.

Receipt annexed in answer to 2d direct interrogatory.

B. F. HALLETT, *Commissioner.*

METHUEN, *Jan'y 6th*, 1844.

TO ADOLPHUS DURANT:

Your real estate tax for the year 1843 is - - - -	$37 44
Cost for advertising, &c. - - - - - - - -	1 88
	$39 32

Received payment by Stephen Barker, esq.

J. G. WHITE, *Coll. and Treas.*

I, Stephen Webb, of Salem, in the district of Massachusetts, forty-eight years of age, on oath, depose and say, in answer to the interrogatories contained in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I was cashier of the Mercantile Bank in Salem, Mass.

2. 2d direct answer.—During that year the bank held a mortgage of the estate of Adolphus Durant, in Methuen. It was assigned. Two gentlemen, Mr. Treadwell and Mr. Farley, called at the bank at that time—I think those are the names of the gentlemen—and inquired if they paid Mr. Durant's note, whether the mortgage would be assigned to them. The bank refused to transfer the mortgage without Mr. Durant's consent. About that time it was assigned to Edward S. Rand and Charles S. Storrow, by order of Mr. Durant; he wrote an order to that effect, dated 21st of May, 1845. That order is now in the bank.

3. 3d direct answer.—I only know that they paid the note and took an assignment of the mortgage. I know nothing about it since.

4. 4th direct answer.—It was assigned at the written request of Mr. Durant. A copy of which request is annexed, marked A.

5. 5th direct answer.— It would not.

6. 6th direct answer.—I should think the mortgage had been held by the bank ten years at least, perhaps more; the note was for four thousand dollars.

And in answer to Cross-interrogatories proposed by the Counsel for Dfts.

1. 1st cross answer.—I signed the assignment of the mortgage as cashier of the bank, and at the time I did so, I saw the written request of Mr. Durant, a copy of which I have annexed. I knew Mr. Durant's handwriting.

STEPHEN WEBB.
B. F. HALLETT,
Commissioner.

(Copy.)

A.

Annexed in answer to 4th direct interrogatory.
B. F. HALLETT,
Commissioner.

METHUEN, *May 21st*, 1845.

To STEPHEN WEBB, Esq.,
Cashier of the Mercantile Bank, Salem.

SIR: In pursuance of an agreement with the Essex Company, in which I have agreed to give my consent that the mortgage which your bank holds on my estate, in Methuen, shall be signed by you to them,

this is to request you to assign the same to Edward S. Rand and Charles S. Storrow, esquires, in trust and for the benefit of said company.

Yours, respectfully,

(Signed) ADOLPHUS DURANT.

The above is a true copy of the original.

I, Samuel Whitwell, of Boston, in the district of Massachusetts, sixty years of age, on oath, depose and say, in answer to the interrogatories contained in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I was an auctioneer.

2. 2d direct answer.—I made two sales of land there at public auction, one in 1846, the other in 1847.

3. 3d direct answer.—The plans annexed, marked "A," B. F. H., and "B," B. F. H., respectively, are lithographic plans showing the lots as they were sold at the two different sales. The figures in ink show the prices which the several lots brought at the two sales. The paper marked "C," B. F. H., which is annexed, shows the respective prices which all the lots brought which were sold at the two different sales.

4. 4th direct answer.—Our orders were from a company which I supposed to be the Essex Company.

SAMUEL WHITWELL.

U. S. OF AMERICA,
Massachusetts district.

By virtue of the foregoing commission, I caused the deponents therein named to be brought me in Boston, in said district, the said Stephen Webb on the twenty-eighth day of June, the said Samuel Whitwell on the thirtieth day of June, the said Josiah G. White on the twenty-eighth day of June, all in the year eighteen hundred and fifty-two, and they, being then and there severally duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories annexed to said commission, gave respectively the foregoing answer by them, severally signed in my presence; and the same were reduced to writing in the presence of each, for his own deposition, by Henry L. Hallett, a clerk employed by me for that purpose. And I further certify, that in taking said depositions I conformed in all things to the directions in said commission contained.

Witness my hand and seal, the day and year aforesaid.

B. F. HALLETT,
Commissioner Cir. Court U. S. for Massachusetts district.

196

Annexed to answer to third direct interrogatory.
B. F. HALLETT, *Commissioner.*

Memo. prices of land sold by auction in Methuen, Mass., by Whitwells & Seaver, April 28, 1846.

Lot.	Price per foot.	Lot.	Price.	Lot.	Price.	Lot.	Price.	Lot.	Price.	Lot.	Price.
1	31½ cents.	28	27½	55	40	82	9	109	8	136	6⅜
2	29 "	29	33½	56	34	83	9½	110	12½	137	6⅜
3	29 "	30	37½	57	25	84	10	111	10¾	138	6¼
4	29 "	31	47½	58	21	85	10	112	8	139	6¼
5	29 "	32	50	59	21	86	9½	113	7¼	140	6¼
6	29 "	33	70	60	21	87	10	114	7¼	141	6¼
7	29 "	34	50	61	20	88	10	115	7¼	142	6¼
8	29 "	35	28	62	20	89	13½	116	7¼	143	6¼
9	31 "	36	28	63	20	90	13	117	7¼	144	6¼
10	31 "	37	28	64	20	91	14	118	7	145	6½
11	49 "	38	27	65	22	92	9½	119	7	146	6⅜
12	58 "	39	26	66	21	93	7¼	120	7		
13	40 "	40	25½	67	20	94	7¼	121	7		
14	30 "	41	22	68	20	95	7¼	122	7		
15	30 "	42	21	69	20	96	7¼	123	7		
16	30 "	43	22	70	20	97	6¾	124	7		
17	30 "	44	21	71	19	98	6¾	125	7¼		
18	28 "	45	21	72	18	99	6¾	126	7¼		
19	28 "	46	20½	73	18½	100	6¾	127	7¼		
20	28 "	47	20	74	20	101	7	128	7¼		
21	28 "	48	20	75	19½	102	7	129	10½		
22	29 "	49	20	76	19½	103	6¾	130	11		
23	29 "	50	21½	77	37½	104	7	131	7¼		
24	30 "	51	21½	78	13½	105	6½	132	7¼		
25	29 "	52	21½	79	12½	106	7	133	6⅜		
26	29 "	53	21½	80	10	107	8	134	6⅜		
27	28 "	54	21½	81	10	108	8	135	6⅜		

Memo. prices of land sold at auction, by Whitwells & Seaver, April 28, 1847, in Lawrence, Mass.

Lot.	Price per foot.	Lot.	Price per foot.	Lot.	Price per foot.	Lot.	Price per foot.
147	$1.60	172	$ .85	194	25 cents.	219	27 cents.
148	1.03	173	.86	195	33 "		
149	1.03	174	.86	196	24 "		
150	.98	175	1.86	197	25 "		
151	.98	176	1.51	198	25 "		
152	.98	177	1.01	199	23 "		
153	.98	178	.91	200	23 "		
154	1.00	179	.81	201	22 "		
155	1.00	180	.81	202	21 "		
156	1.01	181	.81	203	21 "		
157	1.01	182	.81	204	21 "		
158	1.17	183	.78	205	21 "		
159	1.17	184	.78	206	21 "		
160	1.80	185	.80	207	21 "		
161	1.33	186	.80	208	21 "		
162	.85	187	1.01	209	21 "		
163	.85	188	1.06	210	24 "		
164	.85	189	1.06	211	24 "		
165	.88	190	1.22	112	25 "		
166	.85	Lot next		213	25 "		
167	.85	to the		214	25 "		
168	.85	Church.	1.28	215	27 "		
169	.85	191	.63	216	27 "		
170	.85	192	.35	217	27 "		
171	.85	193	.24	218	27 "		

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire,*
U. S. Commissioner for the District aforesaid.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the answers to the interrogatories hereunto annexed of William Swan, Leonard Wheeler, Phineas M. Gage, Fairfield White, Eliphalet Hall, and Daniel Merrill, all of the city of Lawrence, in the district aforesaid, witnesses to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence et al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you; and each witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein, enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answers of the deponents to each fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE et al. } In Equity.

Interrogatories to be proposed in behalf of the Plaintiff to William Swan, Leonard Wheeler, Phineas M. Gage, Fairfield White, Eliphalet Hall, and Daniel Merrill, all of the city of Lawrence, in the district aforesaid.

1. Do you know the parties to the above entitled action, or either, and which of them?

2. State your occupation and your place of residence, and how long you have resided there, or in the vicinity thereof?

3. Are you acquainted or familiar with the several lots of land described in the papers hereto annexed, marked A? If yea, please say whether they are or not in the possession or occupation of said Durant; and how long you have known said lots; and whether or not you own, or have at any and what time owned, any land situate in the vicinity of said lots; and, if you say you have, state how near such lands were to the lots inquired about?

4. Declare whether you have or not had any and what opportunities of becoming acquainted with the value of lands in the city of Lawrence from the year 1844 to this time; whether or not you have been, or still are, a land-owner there; whether you have bought and sold land there; if yea, in what quantities, and when; whether or not you have attended auction sales of lands in said city; and whether or not have you been conversant with private sales of land there.

5. Have there or not been any, and, if any, how many large sales of lands at auction in said city; if yea, did you or not attend them, and when and by whom were they made?

6. What in your opinion was the value of the said parcels of land described in the paper marked A, when the Essex Company located in Methuen?

7. State whether or not the values of said lots exceeded, after the Essex Company or their agents began to purchase, or to agree to purchase, lands in their vicinity, what they had been in the year 1844. If yea, in what ratio and proportion, or amount, had they so increased?

8. What was the value of said lots in April, 1846?

9. What was the value of said lots in July, 1846, by the acre; what by the foot, according to your best judgment?

10. How much more per acre or per foot would you have given for said lots after the Essex Company had begun their purchases in Methuen, than you would have given therefor prior to said time?

S. BARTLETT, *for Pltff.*
By E. D. SOHIER.

A.

A piece of land containing about six acres, with a dwelling-house and barn thereon, bounded northerly by Spicket river, easterly by the county road, and southerly and westerly by land of Merrill Gage.

Another piece of land, which lies easterly of the land above described, on the easterly side of said road containing ten acres, with a paper-mill and water privilege, beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill; thence easterly by said Merrill's land to Spicket river; thence northerly by said river ten rods; thence easterly across said river to a stake and stones on the easterly side of the river; thence northerly and westerly by the side of said river, including the same, to the stone bridge at said road; thence southerly by said road to the first bound.

Another piece of land containing about seven acres, lying southerly of the last described, bounded northerly, southerly, and westerly by land of Daniel Merrill, and easterly by Spicket river, with the paper-mill standing thereon, together with all the machinery in said mill used for conducting the business of making paper, and conducting the usual business of the establishment.

Also another piece of land containing about half an acre, lying on the easterly side of said river, opposite to the mill, bounded westerly by said river; southerly, easterly, and northerly by land of the heirs of Enoch Poor, deceased; also a road two rods wide leading from said road to the last described premises through land of said Merrill.

A true copy—Attest: ISAAC O. BARNES, *Clerk*.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE. } In Equity.

Cross-interrogatories to be proposed in behalf of the Defendants to William Swan, Leonard Wheeler, Phineas M. Gage, Fairfield White, Eliphalet Hall, and Daniel Merrill, all of the city of Lawrence, in the district aforesaid.

[The defendants object to the 10th direct interrogatory as irrelevant and hypothetical.]

First. Are you a creditor of the said Durant; if yea, to what extent? Have you been on terms of friendly intercourse with him, and how long?

Second. If in answer to the third direct interrogatory you shall have stated that you own, or have owned, land in the vicinity of said lands inquired of, state particularly what land you owned when you became the owner thereof, and when and to whom the same was sold, if it has been sold, and the price paid therefor; state particularly how long you

have been acquainted with the lots of land inquired about, and how particular your acquaintance therewith has been, and what reasons you have to call your attention particularly thereto, or to any of them?

Third. If in answer to the fourth direct interrogatory, you shall have stated that you have been conversant with private sales of land in Lawrence, and have bought and sold land there, please to specify every parcel of land in said Lawrence, bought or sold by you, either on your own account, or as agent for others, from the year 1840 to this time, and any and every purchase or sale of land with which you have been acquainted by personally witnessing the transaction; and fix the date of every such purchase or sale, the quantity of land sold, and the price paid therefor; and specify also every bargain for the purchase or sale of land in said Lawrence during said time, made by you, or which you personally witnessed, and give the particulars thereof; and if you have attended auction sales in said Lawrence, specify the same, and every sale of land you personally saw or heard at such auctions, and the nature or terms thereof? State, also, whether you have any other meaning in saying that you have been "conversant with private sales of land" there, that you have *personally* witnessed such sales, or effected them on your own account, or as agent for others; and if you have any other meaning, state what else you do mean?

Fourth. If you shall have undertaken to answer the sixth direct interrogatory, state the date which you mean to fix as being the date of the location of the Essex Company in Methuen, and whether you have stated your present opinion of the value *there*, or an opinion formed at that time of the value; give the value of each lot separately, and how you estimate such value, whether for building or other, and what other, purposes?

Fifth. If you shall have undertaken to answer the seventh direct interrogatory, state who you understand the agents of the Essex Company to have been, and how you understood them to have been such agents, and at what dates you understood such persons to have been acting as the agents of said Essex Company; and what purchases, or agreements to purchase lands you know, of your own personal knowledge, from having been personally concerned therein, or a witness thereof, to have been made by said company, or the persons you have designated as their agents, fixing the date and giving the particulars thereof; and whether you have any personal knowledge of any sale of, or agreement for the sale of, said lots before the date you have fixed, and after the same or any other criterion whatever of the rise or fall on value of said lots during said time; and if so, what?

Sixth. If you shall have undertaken to answer the eighth and ninth direct interrogatories, state the value of each lot separately, and how you estimate it, as particularly as you are required to do by the fourth cross-interrogatory, in respect to the questions therein contained.

Seventh. If you shall have undertaken to answer the tenth direct interrogatory, state the purposes for which you would have given the price or increased price you mention, and the date to which you refer

understood that they were agents of the Essex Company. I understood that they were acting as agents at the time they were getting the bonds for the company in 1845, I think. It is impossible for me to state particularly any lots or parcels of lands purchased by the Essex Company or their agents, excepting the land I sold them. I know of others, but cannot now describe them. I know of no other reason for the rise of property there than the purchasing of lands by the Essex Company.

6. 6th cross answer.—I do not feel competent to estimate the value of each lot separately. I estimate them as a whole.

7. 7th cross answer.—They had increased in value as house-lots and as water privileges. I don't understand the latter part of this question. I don't understand to what time it refers.

8. 8th cross answer.—Mr. Durant is a talking man; he has spoken to me occasionally of the value of these lots. I have not heard anything from him relative to the value of said property or his claims vs. the Essex Company. I have known him to be in embarrassed circumstances several years. I am not now, and never have been, at law with the said company.

DANIEL MERRILL.

B. F. HALLETT, *Commissioner.*

I, Leonard Wheeler, of Lawrence, in the district of Massachusetts, fifty-one years of age, on oath depose and say, in answer to the interrogatories contained in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I know Mr. Durant very well. I do not know Mr. Lawrence.

2. 2d direct answer.—I now reside in Lawrence, and have resided there and vicinity for the last twenty years.

3. 3d direct answer.—I know there are such lots as are described; the amount of land in the lots I don't know. One piece—the one he now lives on—is in the possession and occupation of Mr. Durant. I don't know about the others, but from appearance should judge he was not in possession of them. I have known these lots these thirty years. I own, and have owned, land situate near these lots; some as near as a hundred rods, and so along. I originally owned sixteen acres in that immediate vicinity. I have sold about eleven acres in all in different lots.

4. 4th direct answer.—My opportunity of becoming acquainted with the value of real estate in the city of Lawrence in the time mentioned arises from the fact that I have bought and sold land there, and have attended auction sales of land there. I have been, and still am, a land-owner there. I sold one lot of a little over eight acres in the year 1846; the lot was about one hundred and fifty rods from Mr. Durant's lots. I got five hundred dollars an acre for it. I also sold some house-lots, about ten in all, at about the same time; these lots were nearer Mr. Durant's than the eight-acre lot, and better situated, being on a

different street or road. I sold these house-lots for a little more than three cents a foot. This is all that I have ever bought or sold in that immediate vicinity. I attended the two company auction sales, and have heard from the parties interested of many private sales, but never saw the writings.

5. 5th direct answer.—There has been two large company sales of land in said city. I attended them. One was in the spring of '46. I know the other was either in the spring of '45 or '47, I'm not sure which. There was a year's difference in the time of the sale. These sales were said to be by the Essex Company.

6. 6th direct answer.—I should say that at that time they were worth twelve and a half cents a foot, take the lots through.

7. 7th direct answer.—The land which I sold in 1846 for five hundred dollars an acre was not worth in 1844 more than thirty-five dollars an acre. Mr. Durant's lots being better situated than mine, must have increased even more in value.

8. 8th direct answer.—I have already said twelve and a half cents a foot.

9. 9th direct answer.—I consider the lands had about the same value in July that they had in April. Many lots were bid off at the auction in 1846 at very high prices, but, as I am informed and believe, were not paid for at those prices, as they were speculating prices as I suppose.

10. 10th direct answer.—These lots must certainly have increased twenty-five or thirty times in value.

And in answer to Cross-interrogatories proposed by Counsel for Defts.

1. 1st cross answer.—I am not a creditor of Mr. Durant. I have known him twenty-five or thirty years; been on good terms with him.

2. 2d cross answer.—I think it was in 1843 I became the owner of the land mentioned in my 4th direct answer. I sold it to J. B. Loomis. I mean the eight-acre lot; the house-lots I sold to different individuals; the prices I have already stated. I have been acquainted with the lots alluded to for the last twenty-five or thirty years. What called my attention to the land was, that it was said to be in the law, and was contested property. I am almost as familiar with the two first lots described as I am with my own land, from continually seeing them. The others I am not as familiar with.

3. 3d cross answer.—I have already mentioned all the sales of land, buying and selling, to which I have been a party. All my knowledge of private sales has been derived from conversation with the parties interested, and common conversation. At the first auction sale the land bid off varied in price from six and a quarter to seventy-five cents per foot. The only lot that I distinctly recollect was the first lot which was sold; it was situated at the corner of Essex and Jackson streets, and brought seventy-five cents per foot. The next lot to this one brought about fifty cents. I cannot define the lots particular as they were sold,

but was present at the whole sale. I was also present at the second auction sale, but have not so distinct a recollection of any particular lots, but recollect they brought much higher prices than they did at the first auction sale. My knowledge of private sales has been from hearsay; the parties interested have told me what land has been bought and sold for in different parts of Lawrence, and particularly where these lots are; a good many lots have been sold in this vicinity.

4. 4th cross answer.—I fix the date of the location in 1845; that is the time, if I am not mistaken. I have stated what I suppose it was worth at that time. I value the lots for building purposes. I should rather not attempt to value each lot separately, but value them as a whole at twelve and a half cents per foot.

5. 5th cross answer.—I knew that the land was rising in value, and it was understood that a company was coming there to manufacture. I did not know at that time who the agents of the company were. My criterion for the rise of said property is what I sold my land for, and what people told me other land in the vicinity brought.

6. 6th cross answer.—I should say that the six-acre lot was worth more for building purpose, and the others for manufacturing purposes. If there is any difference in the value of the lots, I should consider the ten-acre lot the least valuable. But my opinion is that the lots were worth at that time twelve and a half cents all through.

7. 7th cross answer.—I have not stated that I would have given the price I have mentioned. I didn't want any more land than I owned. I have estimated the value of these lots as building lots. The last clause of this question is unintelligible.

8. 8th cross answer.—I have heard Mr. Durant talk about the matters inquired of, but what he said made no impression on my mind, either one way or another. I never heard him make any statement as to the value of his property or the amount of his claim against the Essex Company. I have heard from others that for the last fifteen years he has been in embarrassed circumstances. I never have been at law with said company.

LEONARD WHEELER.

B. F. HALLETT, *Commissioner.*

I, Phineas M. Gage, of Lawrence, in the district of Massachusetts, fifty years of age, on oath depose and say, in answer to the interrogatories contained in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I know Mr. Durant. I do not know Mr. Lawrence personally.

2. 2d direct answer.—I reside in Lawrence; am a stone contractor. I have resided where I now do, or in the immediate vicinity, since 1837.

3. 3d direct answer.—I am acquainted with the several lots alluded to. He lives on one of the lots. I should not think the others were in his occupation or possession. I have known these lots fifteen years.

I did own land adjoining the first lot mentioned; my land was bounded on one side and one end by this lot.

4. 4th direct answer.—I have bought and sold land there at different times from 1844 to the present time. I have been and still am a land owner there. In April, 1846, I bought one house-lot 40 x 93. In November of the same year I bought another house-lot of the same size. In October, 1849, I bought another house-lot; this was 40 x 80; this last lot was near by the lots mentioned in schedule A. I have since sold one of these lots. These are all the lots I have bought or sold in Lawrence since 1844. I have attended auction sales of land in said city, and I have been conversant with private sales of land there.

5. 5th direct answer.—In 1846 the Essex Company had a large auction sale of land, and I was present. In 1847 the Essex Company had another large sale at auction of lands. I was present at this one also.

6. 6th direct answer.—Before the Essex Company located there the land inquired about was worth a hundred dollars an acre. When the Essex Company located there, we left off talking about acres and valued land by the foot; this land was then worth a shilling a foot. I only estimate the land. I am not familiar with the value of water privileges.

7. 7th direct answer.—These lands did rise very rapidly in value after the Essex Company began to purchase lands there. They rose at the least twenty-fold in value. What would before have brought a hundred dollars an acre was then worth two thousand. I state this from facts; what I know the company paid for land.

8. 8th direct answer.—Land adjoining these lots sold in April, 1846, for twenty-five cents a foot. The land thus sold was not as valuable as these lots, I should think.

9. 9th direct answer.—The lands kept increasing very rapidly in value after the first auction sale in April, 1846. In July, 1846, land had increased from four to six cents a foot in value, and these lots had increased as well as others.

10. 10th direct answer.—They were worth three times as much before the company had located, between the buying and the location; after the location they increased in value, as I have stated in my third direct answer. I was not buying land, and cannot say what I would have given. I had as much land as I wanted.

And in answer to Cross-interrogatories proposed by Counsel for Defts.

1. 1st cross answer.—I am not a creditor of Mr. Durant's. I have been on friendly terms with Mr. Durant for the fifteen years that I've been his neighbor.

2. 2d cross answer.—I became the owner of some land, about sixty acres, adjoining the first of the lots mentioned in schedule A, in 1828 or 1829. I sold it to the Essex Company in October, 1844. I got

three thousand dollars for it. I used to work a good deal on these lots, have ploughed them quite often, and cut hay off of them.

3. 3d cross answer.—The three house-lots mentioned in my third direct answer, and the sixty-acre lot, are all the lots of land that I have bought or sold in Lawrence since 1840. I have been present at quite a number of private sales where the parties have bargained and sold, but I never saw the writings. I have attended other auction sales besides the company sales. I was present when Parmenus Pratt bought a lot of the Essex Company, in October, 1849, for eighteen cents a foot. I have been present at many private sales, but cannot now recall the names of the parties. As I have already stated, I attended the two company sales, and have attended individual sales besides. The first lot bid off at the first company sale was a lot at the corner of Jackson and Essex streets; it was bought by Mr. Jenness, at 70 cents per foot. Mr. Orin Foster bought four lots at the same sale; I think he paid 28 cents per foot; these lots were on Essex street. I cannot remember the names of the parties now. What I mean by being conversant with private sales is, that I have heard the parties bargain and sell.

4. 4th cross answer.—I fix the date of the location of the Essex Company in Methuen in May or June, 1845, according to the best of my recollection. The opinion I have given is the opinion I formed at the time of the value of the land. I estimate the lots as a whole, for building purposes.

5. 5th cross answer.—Mr. Saunders, when he bought my sixty-acre lot, told me that he was buying it for a company that was not then formed; and he told me that if they could get lands at a certain price, a company would be formed and located there; this was in 1844. My lot is the only one that I know, of my knowledge, as having been bought for this company; public report mentioned others. The town of Methuen held a meeting in Nov., 1844, I think, and voted to sell their farm to this company. I was present at the meeting. I can give no other reason for the rise in value of the property than what I have already stated.

6. 6th cross answer.—I have already stated, that take the lots through they would average a shilling a foot in value in April, 1846, and in July they would have sold for more. The value of each lot separately at this time, to the best of my judgment, was for the six-acre lot a shilling a foot; the ten-acre lot I should put at eight cents a foot; the seven-acre lot was at that time very valuable, worth, certainly, two shillings a foot; the half-acre lot was not very valuable, say worth a hundred dollars. I make my estimate from what land sold right adjoining these lots.

7. 7th cross answer.—I did not wish to buy the land, as I have stated. The value I put upon it I fix from the price land sold around it for building purposes.

8. 8th cross answer.—I have never conversed with Mr. Durant relative to the matters inquired of. I never have heard any statements

from him relative to the value of this property, or the amount of his claim agaist the Essex Company. I have known him to be in embarrassed circumstances for seven or eight years. I have never been at law with said company.

PHINEAS M. GAGE.

U. S. OF AMERICA,
Massachusetts district.

By virtue of the foregoing commission, on the tenth day of May, the eleventh day of May, and the fifth day of April, one thousand eight hundred and fifty-two, I caused the several deponents therein named to come before me in Boston, in said district, and they being then and there, (to wit, Daniel Merrill on the fifth of April, Leonard Wheeler on the tenth of May, and Phineas M. Gage on the eleventh of May,) severally duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories thereto annexed, gave the foregoing answers by them subscribed severally in my presence; and the same were reduced to writing in the presence of each respectively, when giving his own deposition, by Henry L. Hallett, a clerk employed by me for that purpose. And I further certify, that I conformed in all things, in taking said depositions, to the directions in the aforesaid commission contained. Witness my hand and seal this day and year aforesaid

B. F. HALLETT,
Commissioner of the Cir. Court of U. S. for Massachusetts district.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts District.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire,*
U. S. Commissioner.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed, of Daniel Saunders, junior, of Lawrence, in said district of Massachusetts, a witness to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you; and said witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination, as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed, to return, together with this commission, and your doings herein enclosed, sealed, and directed to the circuit court aforesaid.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this ninth day of February, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties, in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent, whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories to be proposed, in behalf of the Plaintiff, to Daniel Saunders, jr., of Lawrence, in the district aforesaid.

1. Please to state your age and profession, and place of residence?

2. Are you the son of Daniel Saunders, esq., one of the defendants in this cause?

3. Declare whether, or not, you were present at any interview between your father and the plaintiff, and Mr. Stephen Barker, in or about the month of March, 1845?—if yea, was said interview had in relation to any, and what business?

4. Was your father, at said interview, acting in behalf of any other, and what persons or parties?

5. Declare whether, or not, at said interview, you drew any bond, to be given by any persons to the said Durant?—if yea, say what become thereof, and where it now is?

6. Have you any copy of said bond?—if yea, please annex it to your answers; if you have no copy, please declare the contents thereof to the best of your recollection?

7. State, as near as you can, the time when the Essex Company, or their agents, began to purchase lands in Methuen.

S. BARTLETT, *for Pltff.*
By E. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

A. DURANT
vs.
LAWRENCE & al. } In Equity.

Cross-interrogatories to Daniel Saunders, jr., on part of the Defendants.

1. If, in answer to the third direct interrogatory, you have testified to any interview between your father and the plaintiff in this cause, and Stephen Barker, at which you were present, and have stated or tacitly admitted that the same occurred at the time mentioned in said interrogatory, please reconsider your said answer, and declare whether you mean to fix the time of said interview as in or about the month of January, 1845, "and whether, or no, you were present at more than one such interview relating to that business; and if more than one, how many, and how far apart; and whether the said interview or interviews did not occur at or about the time of the making and delivering to your father of the conditional deeds of the plaintiff, and of the said Barker respectively, bearing date, respectively, March 18th and March 19th, 1845;" and whether the same were not made and delivered about those dates?

2. If you have testified that you drew any bond at said interview, or have annexed any copy, or stated your recollection of the contents of any draft of a bond prepared or produced at said interview, declare whether, or not, the said bond was made at or near the same time with the said conditional deed of the plaintiff to Messrs. Saunders, Lawrence, and Nesmith, and in reference to said deed; and whether the said bond and deed were, or were not, intended to embrace, in writing, the result of all previous negotiations between the plaintiff and your father, and to express the whole agreement between them; and whether, or no, the terms of the said agreement were not discussed at that interview; and whether alterations were not made in the condition of said bond to obviate objections, or meet suggestions made by the plaintiff; and whether the said draft, as it finally stood, was not assented to by the plaintiff, as containing a true expression of the whole agreement between him and your father; and whether the said bond did not require the signatures of persons not present at said interview; and whether on that, or what other account, another writing was not drawn at said interview, and signed by your father, and delivered to the plaintiff, to be held by him until the said bond should be executed and delivered; and whether the said other writing was not intended to express the substance of the same agreement which was recited in said bond; and whether the plaintiff did not assent to and accept said writing as containing a true expression of the whole agreement between your father and the plaintiff, which the said bond, when executed, was intended to secure?

3. Please look at the paper now shown to you by the master, and

declare in whose handwriting it is, and whether the said paper is, or is not, the original draft of a bond above mentioned? Please look at the original deeds from said Barker and said Durant, respectively, to Messrs. Saunders, Lawrence, and Nesmith, now shown to you by the master, as well as the said draft of a bond; compare the dates of the said several instruments, the dates of the certificates of acknowledgment, and the names of the witnesses; and declare, if you know, when and where each of the said deeds was made and delivered, and state particularly the order of occurrences, so far as you know, at the several interviews, if more than one, which you attended, respecting the making, signature, or delivery of the said several papers, and of the memorandum of agreement, if any written, to stand in the place of said bonds; and state all that was done and said at each interview, so far as you recollect?

4. If, in answer to the seventh direct interrogatory, you have stated any time when the Essex Company, or their agents, began to purchase lands in Methuen, please reconsider your said answer, and declare whether the said Essex Company was in fact formed at the time you speak of; and whether your father and the defendants, Lawrence and Nesmith, at the time of their negotiations and purchases, were acting as agents of the Essex Company, or whether they were purchasing on their own account and risk, or on the account and risk of themselves and any and other persons, in the expectation of selling at a profit to some such company, if it should be formed; and whether they did not afterwards, in fact, sell at a profit to said Essex Company?

5. If, in answer to the fourth direct interrogatory, you have stated that your father was acting for the Essex Company, or for any persons or parties other than the said Lawrence and Nesmith, jointly with himself, please reconsider your said answer, and declare whether, or no, you have any correction to make therein?

6. Was anything said, and what, and by whom, at the interview above mentioned, or any other interview at which the plaintiff was present with you, respecting a distinct arrangement made, or to be made, between your father and Stephen Barker, relative to a sale and conveyance by him of the title he held under the deed from Jesse Sargent?

7. Whether, or not, at the said interview, or at any and what other time, the plaintiff's conditional deed was delivered to your father, and whether under any and what restriction as to the use of the same, not expressed in the written memorandum of the agreement signed by your father? Was any promise made by your father in your presence and hearing, that the said deed should or should not be recorded?

8. Was any such promise made respecting the deed of said Barker?

9. Was there, or not, a separate and distinct bargain made between your father and Stephen Barker, as to the terms on which he, the said Barker, should convey the title held by him under the deed of Jesse Sargent?

10. What right, title, interest, or claim in land, not included in said Barker's deed, if any, did you understand from the statement of the par-

ties present at said interview; was the deed of said Durant and wife intended or expected to convey to the grantees that was not conveyed by said deed of said Barker?

11. Do you know any other matter or thing mentioned, or which may be of benefit to the defendants?—if yea, declare the same as fully as if particularly interrogated thereto?

W. H. GARDINER, *for Defts.*,
By C. G. RIPLEY.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Additional Interrogatories to Daniel Saunders, jr., propounded on behalf of the Plaintiff.

If, in answer to the fourth cross-interrogatory, you say that your father and the defendants Nesmith and Lawrence were purchasing lands on their own account, in expectation of selling them to a company, state as near as you can how early they commenced negotiating for such lands with said expectation; say when they began to take bonds and refusals of lands, and when they made their first purchases.

S. BARTLETT,
By E. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

I, Daniel Saunders, jr., of Lawrence, in the district of Massachusetts, twenty-nine years of age, on oath depose and say, in answer to the interrogatories in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I am twenty-nine; am a counsellor and attorney at law, and reside at Lawrence.

2. 2d direct answer.—I am.

3. 3d direct answer.—I could not state the time definitely, but I think I was present at such an interview in the winter or spring of 1845. The interview was in relation to the purchase of some lands occupied by Adolphus Durant, and owned by Stephen Barker.

4. 4th direct answer.—My father was acting in behalf of himself and several gentlemen who had formed a company, called the Merrimack Water power Association.

5. 5th direct answer.—I believe that I drew a bond at Mr. Stephen Barker's house prior to the interview, which bond was, I think, made to Durant. I kept the bond in my possession some little time. I think I then gave it to Mr. Abbot or Mr. Nesmith, of Lowell; I don't know whether it ever came back into my hands or not. I only know

where it is from my impression; my impression is, that it is now in the hands of the Essex Company, but of that I have no personal knowledge.

6. 6th direct answer.—I have no copy. I cannot presume to give the contents of the bond. I can only give a general idea of it. It was a penal bond, given in the penal sum of twenty thousand dollars, I think; I do not recollect the exact amount; the condition of which was, that the parties who were to sign the bond should pay to Durant, for his interest in any lands in the vicinity of Spicket river, the sum of, I think, twenty-five thousand dollars, but of that I'm not sure; from the sum mentioned was to be deducted the amount of any and all incumbrances upon the estate. An additional sum of two thousand dollars was, I think, to be paid, if a Fourdrinier machine was taken.

7. 7th direct answer.—The Essex Company was chartered in the year 1845, and began to purchase lands immediately in Methuen. The Merrimack Water-power Association began to purchase lands as early, I think, as 1844.

And in answer to the Cross-interrogatories.

1. 1st cross answer.—I think that the interview alluded to was in the latter part of the winter, or the early part of the spring of 1845. I have no recollection of but one interview, and it was not far from the time of the dates of the conditional deeds, as mentioned in this interrogatory.

2. 2d cross answer.—I think the bond was made about the time of the conditional deed, and in reference to the same. The bond was intended to express the agreement between the plaintiff and my father. Some alterations were made in the original bond which I drew at Mr. Barker's house, and I believe the draft, as it finally stood, was satisfactory to the plaintiff, and assented to by him. The said bond did require the signature of several persons not then present, and for this reason a memorandum was drawn at this interview, either by myself or Mr. Barker, I don't recollect which, and signed by my father, and delivered to the plaintiff, which, I think, was intended to express the substance of said bond, which was to be held by Durant until the bond should be executed; which memorandum was, I think, accepted and assented to by Durant.

3. 3d cross answer.—The paper shown me is in my own handwriting, and is the original draft of the bond above mentioned. I have examined the original deed from Barker to Messrs. Saunders, Lawrence and Nesmith, and also a certified copy of Durant's deed to the same parties, now shown me by the commissioner. I do not recollect that I was present at the execution of the deed from Barker. The deed from Durant, I think, was executed at the time of the draft of the original bond here produced, and at the time of the execution of the memorandum in writing which was to stand in the place of the bond. I do not now recollect the particular conversation which took place at this interview.

4. 4th cross answer.—As I have stated before, the Essex Company was chartered in 1845. My father, Lawrence and Nesmith were not acting as agents of the Essex Company prior to the time it was chartered, but were purchasing lands on their own account and risk, and on account of those associated with them under the name of the Merrimack Water-power Association, which other persons were Messrs. Abbot and Hopkinson, and Tyler of Lowell, Nathaniel Stevens and myself, and in the expectation of selling to some corporation which might be chartered, and did sell to the Essex Company after it was incorporated, at a profit.

5. 5th cross answer.—I think of no correction to make to any answer I have made.

6. 6th cross answer.—I do not now recollect any.

7. 7th cross answer.—I do not recollect of any other restrictions than those contained in the memorandum. I have no recollection of any promise in relation to the recording of the said deed made by my father.

8. 8th cross answer.—Not to my knowledge.

9. 9th cross answer.—I do not recollect that I was present at any bargain between Barker and my father. I do not know that there was any dependant bargain or agreement between Barker and my father, relative to the conveyance of the title held by Barker under the deed from Sargent.

10. 10th cross answer.—I do not recollect for a certainty, but I think there was some question as to the right of dower of Mrs. Durant in the premises, and I understood from Mr. Durant or Mr. Barker that Durant claimed title in some premises not conveyed by Barker's deed, which premises, I think, were on the easterly side of Spicket river, which were also claimed, if I recollect right, by Daniel Merrill, I think.

11. 11th cross answer.—I do not recollect any thing.

And in answer to additional Interrogatory proposed by Counsel for Plaintiff.

Answer to additional interrogatory.—I think they began such negotiation as early as 1844. I cannot say distinctly when they began to take bonds and refusals of lands, but think it was some time in 1844. My father purchased lands in reference to the water-power of Merrimack river, and with the expectation that such power would be used, as early, I think, as 1835, but this was upon his sole risk and responsibility.

DANIEL SAUNDERS, Jr.

U. S. of America,
Massachusetts District.

On the second day of April, one thousand eight hundred and fifty-two, by virtue of the foregoing commission to me directed, I caused the deponent therein named to come before me in Boston, in said district, and he being then and there duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories thereto annexed,

gave the foregoing answers by him subscribed, in my presence; and the same were reduced to writing in his presence, by H. L. Hallett, a clerk employed by me for that purpose. And I further certify, that in taking said deposition I conformed in all things to the directions in said commission contained.

Witness my hand and seal the day and year aforesaid.

B. F. HALLETT,
Commissioner Cir. Court U. S. for Mass. District.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire, U. S. Commissioner.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Stephen Barker, a witness to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and said witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Interrogatories proposed to Stephen Barker, in behalf of Plaintiff.

1. Say whether, or not, you purchased at auction, on or about September, 1843, any real estate from one Jesse Sargent, situate in the then town of Methuen, and whether it was, or was not, the same that had formerly been owned by Adolphus Durant, plaintiff in the action.

[Objected to as mere repetition of matter already inquired of.
W. H. GARDINER.]

2. Please to state who acted at said sale as auctioneer. If you say that you acted yourself, declare whether you was or was not a licensed auctioneer for the town of Methuen, during said year; and if you say you were not, declare how you came to act as auctioneer at said sale; whether it was by the authority of any licensed auctioneer, and if so, state his name.

[Objected to as not the best evidence.
W. H. GARDINER.]

3. Please to state why you became a purchaser; whether it was, or was not, at the request of the said Durant; whether it was, or was not, at your own motion, intention, and desire? If you say it was, state when you first formed such intention, and how long it was before you bid at said sale.

[Objected to as mere evidence. W. H. GARDINER.]

4. Please to state whether you applied to said Sargent after said sale for a deed of said premises. If yea, how often did you so apply, and when did you obtain the deed.

5. Was there, or not, any delay on the part of Sargent in giving you said deed? If yea, state the cause of said delay.

6. Declare whether, or not, at the time of said auction, or at the time of receiving said deed from Sargent, or at either of said times, you had any knowledge or reason to suppose that said Sargent held said premises under a conveyance from said Durant which was not made *bona fide*, or that was *made* by said Durant for the purpose of delay and defrauding his creditors?

[Objected to as seeking the witness's opinion in a question of law, not to the statement of any material fact. W. H. GARDINER.]

7. Please to state whether, or not, after said sale at auction, you made any, and what arrangement with said Durant, relative to his occupying said premises.

8. Please to state whether, or not, after you purchased said estate, you were present at an auction whereat one Howe claimed or assumed to make sale thereof as the assignee of said Durant. If yea, please

to state what you said or did thereat; and whether, or not, in what you said or did you acted at your own motion and in your own behalf, or whether you acted at the request of said Durant.

[7 and 8 objected to as mere repetitions. W. H. GARDINER.]

9. Please to say whether you ever saw an advertisement of said sale by the said assignee. If yea, when, and state why you attended said sale. Please declare whether, or not, you ever gave any information to said Saunders, Nesmith, or Lawrence, that the said assignee made any claim to said estate.

10. Please to say whether you were present at any interview between the said Durant and said Saunders, relative to the said Saunders taking a deed from you of said estate. If yea, please declare whether, or not, the said Durant requested or encouraged said Saunders to become a purchaser of said estate; and if so, how and in what manner?

[Objected to as mere repetition. W. H. GARDINER.]

11. Were you, or not, ever a licensed auctioneer in said town of Methuen; if yea, how many years did you act as such, and whether or not you know the usual form and mode in which notices of sales at auction were made and printed at said time in the vicinity of Methuen?

[Objected to as not the best evidence. W. H. GARDINER.]

12. Please look at the advertisement in the newspaper now shown to you, and say whether, or not, you ever saw the same or one similar thereto, and when; and declare whether, or not, said advertisement is in the form and style usually and generally adopted in said Methuen and vicinity at said time by persons having sales to make at auction.

[Objected to as incompetent and leading. W. H. GARDINER.]

13. Please to declare whether, or not, the notices of sales at auction in Methuen and its vicinity at said time were usually published by the party making the sale, or whether by the auctioneer employed to sell.

[Objected to as irrelevant. W. H. GARDINER.]

14. Do you know in what manner it was usual and customary at said time in Methuen to advertise the sale of real estate at auction; whether were such advertisements usually made by an auctioneer or by the party making the sale?

[Objected to as above. [W. H. GARDINER.]

15. Please to say whether you have, or not, conversed with the defendants and their counsel relative to this case, and given them freely all the information requested by them.

SIDNEY BARTLETT,
By EDWARD D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE U. S.,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Cross-interrogatories to Stephen Barker, in behalf of the Defendants, founded upon the Plaintiff's additional interrogatories propounded, subject to all legal exceptions to the said additional interrogatories, and not waiving the same.

First.—If you have said in answer to the second of said additional interrogatories that you acted by authority of any licensed auctioneer, declare when, where, by whom, and in what terms such authority was given to you; whether it was in writing or not; and if in writing produce and annex the same, or declare why you do not. If verbal, only declare in whose presence it was given, and state the conversation just as it occurred.

Second.—Is the licensed auctioneer, to whom you refer, living or dead?

Third.—Was he present at the time and place of sale?

Fourth.—How long before the sale did you hold the conversation with him, if any there was, above stated?

Fifth.—Did he call upon you and request you to act in his behalf, or did you call upon him and signify your desire to act as auctioneer at that sale?—if the latter, what was your reasons for making the request?

Sixth.—If, in answer to the 9th of said additional interrogatories, you have said that you did give any information to said Saunders, Lawrence, or Nesmith, that the assignee of said Durant's estate in insolvency made any claim to said real estate, declare when, and where, and to whom such information was given; whether it was before or after the making and delivery of your conditional deed; and whether you did not at the same time state that the claim of the said assignee, or of any party claiming under him, was entirely groundless, and that you held the only good title, or to that effect? State all that was said on that occasion.

Seventh.—If, in the answer to the 13th and 14th of said additional interrogatories, you have stated any usage or custom as to advertisements of real estate to be sold at auction in the town of Methuen, declare how many instances you have known of real estate in said town sold at auction prior to the time of the sale above mentioned at which you acted as auctioneer? In how many of said sales you personally know that the advertisement thereof was made and signed by the owner, and how many you can recollect that were advertised by the auctioneer?

Eighth.—Do you mean by anything you have above stated in answer to the foregoing additional interrogatories of the plaintiff, to take back,

contradict, or materially alter anything you have stated in answer to the questions before put to you in behalf of the defendants?—if yea, specify in what?

W. H. GARDINER, *for Dfts.*

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

I, Stephen Barker, of Methuen, in the District of Massachusetts, sixty years of age, on oath depose and say, in answer to interrogatories propounded to me by the magistrate, on behalf of the complainant—

1. 1st direct answer.—Yes; I did so purchase; it was the same formerly owned by Adolphus Durant.

2. 2d direct answer.—I acted as auctioneer. I acted as the deputy of Mr. Annis. I had usually taken an auctioneer's license, but I cannot say whether it had expired at that time or not.

3. 3d direct answer.—I became a purchaser on my own motion, conceived for the first time at the sale, because I thought it was going extremely low. I did not bid till after two bids were made, the last of which I think was ten dollars; finding after the lapse of some time that I could get no higher bid, I then first conceived the idea of making a bid myself.

4. 4th direct answer.—I called at Mr. Sargent's store somewhat frequently, as I occasionally passed that way, and when I thought of going there I used to carry a blank with me for the purpose of making a deed after I arrived there. Many times when I called I did not find him at home; at other times when I called he couldn't find his deed which was necessary to write the deed to me from. After a while he told me that unless the deed was at the register's he thought it must be lost, and he would send there and see what intelligence he could get of it. Awhile after, when I saw him, he told me that he had sent to the register's; they examined their minutes and told him who they had delivered it to, and he would endeavor to hunt it up. Subsequent to this, when I called on him, he told me that he had found the deed, and in whose hands he found it. He got the deed and handed it to me. Not having time or convenience to write a deed there, I took it home with me and wrote my deed from it. The next time that I found him at home, after I had written it, he and his wife signed the deed. I obtained the deed on or near the date of the acknowledgment upon it.

5. 5th direct answer.—I believe the only causes of the delay in Mr. Sargent's giving me my deed are stated in my preceding answer.

6. 6th direct answer.—I had not, at either of the periods alluded to, any reason to suppose that the conveyance from Durant to Sargent was any other than a bona fide conveyance, or that it was given to defraud creditors.

7. 7th direct answer.—I made a verbal arrangement with Mr. Durant to occupy the premises on the terms stated in the 97th cross

answer of my first deposition, given before the same commissioner that this is taken by.

8. 8th direct answer.—My answer to this question will be found in my 94th cross answer of my deposition above alluded to. In that matter I acted in my own behalf.

9. 9th direct answer.—I think that before the sale I did see the advertisement inquired about. I cannot now recollect when or where I first saw it. I attended the sale for the purpose of making known publicly my title and claim to the estate. I did inform Mr. Saunders, the first time he came to me to purchase the estate, all the particulars in my knowledge in relation to this sale made by Mr. Howe, and of what I did in relation to cautioning purchasers. With regard to the matter of the assignee's claiming the estate of his own accord under the assignment, I had been told that the assignee did not claim it and make that sale of his own accord, but was required to do so by Mr. Durant's brother-in-law, Foster, whose claim was much larger than that of any other creditor. I think I told this to Mr. Saunders. I don't think I ever talked with Mr. Nesmith about it. I may have mentioned it to Mr. Lawrence.

10. 10th direct answer.—The only interviews between Durant and Saunders at which I was present, about the purchasing by Saunders, I have already described as minutely as I can in my 12th direct answer, in my deposition before alluded to. I don't know that Durant said any more to Saunders to encourage him to purchase the estate than a man who had a high opinion of his property would be likely to say when he wanted to sell.

11. 11th direct answer.—I have been a licensed auctioneer a considerable number of years in the town of Methuen; I don't know how many. I do know the general mode and forms in which notices of sales at auction were made and printed at said time in Methuen and vicinity.

12. 12th direct answer.—I think I have seen that, or one similar to it. I am very positive that I saw it between the time it was published and the day of the sale. I see nothing in that advertisement that is out of the usual form of advertisements as published in newspapers.

13. 13th direct answer.—With regard to sales at auction of real estate, I should say the greater part were published by the parties making the sale.

14. 14th direct answer.—In sales of real estate in Methuen at that time, I think the custom was to publish it in a newspaper when the property was of such magnitude, or of such a character, as to be likely to call in purchasers from abroad. When an estate was sold that was not likely to draw any purchasers from abroad, they have often been advertised by putting up either printed or written notices. I think I have seldom known such advertisements of real estate to be made by the auctioneer alone. I have sometimes known them to put their name after that of the owner as auctioneer.

contradict, or materially alter anything you have stated in answer to the questions before put to you in behalf of the defendants?—if yea, specify in what?

W. H. GARDINER, *for Dfts.*

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

I, Stephen Barker, of Methuen, in the District of Massachusetts, sixty years of age, on oath depose and say, in answer to interrogatories propounded to me by the magistrate, on behalf of the complainant—

1. 1st direct answer.—Yes; I did so purchase; it was the same formerly owned by Adolphus Durant.

2. 2d direct answer.—I acted as auctioneer. I acted as the deputy of Mr. Annis. I had usually taken an auctioneer's license, but I cannot say whether it had expired at that time or not.

3. 3d direct answer.—I became a purchaser on my own motion, conceived for the first time at the sale, because I thought it was going extremely low. I did not bid till after two bids were made, the last of which I think was ten dollars; finding after the lapse of some time that I could get no higher bid, I then first conceived the idea of making a bid myself.

4. 4th direct answer.—I called at Mr. Sargent's store somewhat frequently, as I occasionally passed that way, and when I thought of going there I used to carry a blank with me for the purpose of making a deed after I arrived there. Many times when I called I did not find him at home; at other times when I called he couldn't find his deed which was necessary to write the deed to me from. After a while he told me that unless the deed was at the register's he thought it must be lost, and he would send there and see what intelligence he could get of it. Awhile after, when I saw him, he told me that he had sent to the register's; they examined their minutes and told him who they had delivered it to, and he would endeavor to hunt it up. Subsequent to this, when I called on him, he told me that he had found the deed, and in whose hands he found it. He got the deed and handed it to me. Not having time or convenience to write a deed there, I took it home with me and wrote my deed from it. The next time that I found him at home, after I had written it, he and his wife signed the deed. I obtained the deed on or near the date of the acknowledgment upon it.

5. 5th direct answer.—I believe the only causes of the delay in Mr. Sargent's giving me my deed are stated in my preceding answer.

6. 6th direct answer.—I had not, at either of the periods alluded to, any reason to suppose that the conveyance from Durant to Sargent was any other than a bona fide conveyance, or that it was given to defraud creditors.

7. 7th direct answer.—I made a verbal arrangement with Mr. Durant to occupy the premises on the terms stated in the 97th cross

answer of my first deposition, given before the same commissioner that this is taken by.

8. 8th direct answer.—My answer to this question will be found in my 94th cross answer of my deposition above alluded to. In that matter I acted in my own behalf.

9. 9th direct answer.—I think that before the sale I did see the advertisement inquired about. I cannot now recollect when or where I first saw it. I attended the sale for the purpose of making known publicly my title and claim to the estate. I did inform Mr. Saunders, the first time he came to me to purchase the estate, all the particulars in my knowledge in relation to this sale made by Mr. Howe, and of what I did in relation to cautioning purchasers. With regard to the matter of the assignee's claiming the estate of his own accord under the assignment, I had been told that the assignee did not claim it and make that sale of his own accord, but was required to do so by Mr. Durant's brother-in-law, Foster, whose claim was much larger than that of any other creditor. I think I told this to Mr. Saunders. I don't think I ever talked with Mr. Nesmith about it. I may have mentioned it to Mr. Lawrence.

10. 10th direct answer.—The only interviews between Durant and Saunders at which I was present, about the purchasing by Saunders, I have already described as minutely as I can in my 12th direct answer, in my deposition before alluded to. I don't know that Durant said any more to Saunders to encourage him to purchase the estate than a man who had a high opinion of his property would be likely to say when he wanted to sell.

11. 11th direct answer.—I have been a licensed auctioneer a considerable number of years in the town of Methuen; I don't know how many. I do know the general mode and forms in which notices of sales at auction were made and printed at said time in Methuen and vicinity.

12. 12th direct answer.—I think I have seen that, or one similar to it. I am very positive that I saw it between the time it was published and the day of the sale. I see nothing in that advertisement that is out of the usual form of advertisements as published in newspapers.

13. 13th direct answer.—With regard to sales at auction of real estate, I should say the greater part were published by the parties making the sale.

14. 14th direct answer.—In sales of real estate in Methuen at that time, I think the custom was to publish it in a newspaper when the property was of such magnitude, or of such a character, as to be likely to call in purchasers from abroad. When an estate was sold that was not likely to draw any purchasers from abroad, they have often been advertised by putting up either printed or written notices. I think I have seldom known such advertisements of real estate to be made by the auctioneer alone. I have sometimes known them to put their name after that of the owner as auctioneer.

15. 15th direct answer.—I have conversed with some of the defendants in this case, and some of the counsel for the defendants, and have given them freely all the information requested of me that I was able to give.

And in answer to the additional Cross-interrogatories.

1. 1st cross answer.—A full answer to this question will be found in my 66th cross answer in my deposition before alluded to.

2. 2d cross answer.—He is dead.

3. 3d cross answer.—He was not.

4. 4th cross answer.—About an hour or two, as stated in my 66th cross answer, above alluded to.

5. 5th cross answer.—I don't think he ever called on me in relation to it. I called upon him, as I have before related, but I never expressed to him any desire to act as auctioneer.

6. 6th cross answer.—I related to Mr. Saunders at the time of his first application to purchase the estate, which I have described in my 12th direct answer of my deposition before alluded to, the claim that was made by the sale of the estate by the assignee. I don't think that I said to him absolutely that it was groundless. I think it not unlikely that in the conversation we had about it I expressed my own opinion in regard to it, which was, that that title was not good. I have already stated, in my 12th and other direct answers of my deposition before alluded to, all that I can recollect that was said on that occasion. I think of nothing that I can add or retract.

7. 7th cross answer.—I have probably known of all the auction sales of real estate in Methuen that had taken place for thirty-five years before this one, but am unable to judge of the number of them. I cannot call to my recollection any notice of a sale of real estate in the town of Methuen prior to this one, when the notice of the sale was signed by the auctioneer alone. There may have been such, but I have no recollection of any one.

8. 8th cross answer.—I do not mean, in anything I have stated in my answers to the foregoing additional interrogatories of the plaintiff or the defendants, to take back, contradict, or materially alter anything I have stated in the answers to the questions before put to me in behalf of plaintiff or defendants. My intention has been to be truthful throughout, as near as I could possibly recollect.

STEPHEN BARKER.

B. F. HALLETT, *Commissioner.*

U. S. OF A., *District of Massachusetts.*

On the twenty-fifth day of February, eighteen hundred and fifty-two, by virtue of the foregoing commission to me directed, I caused the deponent therein mentioned to come before me in said Boston, in said district, and he being then and there first duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth, in

answer to the several interrogatories and cross-interrogatories thereto annexed, gave the foregoing answers, by him subscribed in my presence, and the same were reduced to writing in his presence, by H. L. Hallett, a clerk employed by me for that purpose. And I further certify, that in taking said deposition I conformed in all things to the directions in the foregoing commission contained.

Witness my hand and seal, the day and year aforesaid.

B. F. HALLETT,
Commissioner Cir. Court of the U. S. for Massachusetts District.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss:*

To BENJAMIN F. HALLETT, *of Boston, esquire,*
U. S. Commissioner for the district aforesaid.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of George Rogers, a witness to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and said witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other per-

sons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

U. S. Circuit Court,
Mass. district, ss:

Adolphus Durant
vs.
Samuel Lawrence & al. } In Equity.

Interrogatories by plaintiff to George Rogers.

1. Were you, or not, auditor at one time, and when, of the accounts of A. Durant & Co., and of A. Durant and Seth Dewing, and Joseph Foster; and by whom were you appointed, and what were you called upon to do?

2. State whether the copy of the arbitration bond, hereto annexed, was made by you, and whether it is a true copy of the bond under which the referees acted; and where did you obtain the original thereof from which you made the copy?

3. Annex a copy of the accounts, and the amounts thereof, referred to in said bond, as left in the hands of Mr. Tenney.

4. State what accounts were put into your hands as said auditor, and by whom they were handed to you, and when, and in what shape.

5. Did you, or not, make up your statement to the referees according to the accounts referred to in said arbitration bond, or were other accounts brought in to you; and if so, what accounts were they, and by whom brought in, and when?

6. How did you get your knowledge of the accounts you undertook to pass upon; what vouchers had you before you; what evidence was produced to you, and by whom were the same produced?

7. Were the parties before you, and when and where, and how often, and for what purpose, and which of them?

8. After you had made up said accounts, were the same examined by said parties, and which of them, and when and where, and how minutely, and what steps you took to have them examined by the parties?

9. Annex a copy of the account as made up by you.

10. Why was the item of the Fourdrinier machine charged to said Durant in your account; and what voucher or evidence had you for doing the same?

11. By what authority or on what evidence did you make such charge made by you to said Durant?

12. When was your account completed, and was not the last extension of time for the rendering of the award to court made without the consent of Durant?

13. Have you, at any time, and when, and for how long, been in the employ of the Essex Company, or Seth Dewing, or Joseph Foster, or of Foster and Dewing?

S. BARTLETT,
By E. D. SOHIER.

The defendants object to the foregoing interrogatories, as tending to introduce irrelevant and incompetent evidence, and decline to cross-examine.

C. G. RIPLEY, *for Defts.*

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

I, George Rogers, of Boston, in the district of Massachusetts, sixty years of age, on oath depose and say, in answer to the interrogatories in the commission hereto annexed, in behalf of the plaintiff—

1. 1st direct answer.—I was appointed by the referees, I think. James C. Merrill, Moses Grant, and Edmund P. Tilestone, were the referees. I was called upon to take the whole books and accounts of the concern, and make up the accounts of each party, and ascertain the condition of the firm.

2. 2d direct answer.—The copy was made by me, and I have no doubt that it is an accurate one. Judge Merrill sent me the original, of which this is a copy.

3. 3d direct answer.—I am unable to do this, as I have no copy of the accounts. I returned them to Judge Merrill, I think.

4. 4th direct answer.—I think that all the accounts alluded to in the agreement to refer, which is annexed, were put into my hands, and also the books of accounts and memorandums and vouchers. The first were handed me by Judge Merrill. The books of accounts were handed me by Durant, Dewing, and Foster, I think. I can't tell exactly when they were handed to me. I think not a great while after the date of the agreement, but I cannot state the exact time. Part of the accounts were stated, and others were unfinished. I took them as the basis of my examination.

5. 5th direct answer.—I made up my accounts, both from the accounts referred to in the abitration bond, and also from the books and accounts which were furnished to me. The other accounts were memorandums of payments and vouchers, as stated in the preceding answer. In the course of my investigations of the accounts, I applied to the different parties for papers which I thought would assist me in the matter, Durant, Foster, and Dewing, all handed me papers at different times, I think.

6. 6th direct answer.—I got my knowledge from the books and papers handed to me, and from inquiries in relation to accounts in the books; in some instances from individuals with whom the firm had had transactions. The vouchers were evidences of payments of bills and notes, and mutual explanations made by the parties themselves in the

hearing of the referees. The evidences produced to me were the entries in the books and on the accounts, and the receipts of payments, &c.; these were produced by the respective parties.

7. 7th direct answer.—The parties were before me, as far as I recollect now, about the time I commenced the examination. I cannot state how often I saw the parties. I saw each of them at different times when I had occasion to make inquiries in regard to accounts; how often I cannot now remember. I do remember that when I had proceeded so far as to come nearly to a conclusion of my statement of the accounts, at the suggestion of one or more of the referees, I submitted the accounts to Mr. Durant, at the office of N. W. Hazen, esq., at Andover, who was his counsel, as I understood, for examination and explanation; and I think I also submitted the accounts to Mr. Foster and Mr. Dewing; when and where I do not now recollect.

8. 8th direct answer.—When I had made up the accounts as far as I could, a meeting was held by the referees, at which all the parties were present, on the 31st March, 1843. All the items in the accounts were gone over by the respective parties; they objected to some and agreed to others; and such other items as they claimed to have allowed them were duly considered by the referees; and after the hearing and explanation, the accounts were closed by me in conformity to the decisions made by the referees.

9. 9th direct answer.—I have no copy; if possible I will procure one and annex it.

10. 10th direct answer.—Because the parties stated that they had sold it to Mr. Durant, and Dewing held a mortgage of it.

11. 11th direct answer.—I made it on the authority of the statement of the parties, Durant, Dewing, and Foster, and by the direction of the referees.

12. 12th direct answer.—Soon after the 31st of March, 1843. I have no recollection whether the last extension was made with or without the consent of Mr. Durant.

13. 13th direct answer.—I have never been in the employ of the Essex Company, excepting at one time for the purpose of purchasing the fee of Joseph Foster to the mill privilege and lands at Methuen, now Lawrence, and also to purchase the paper-machine of Seth Dewing. I was once employed by Foster, Dewing, and Durant, to go up and examine their accounts. This is the only time I was ever employed by Dewing or Foster, except by Mr. Foster in negotiating some money transactions some years since, as far as I now recollect.

GEO. ROGERS.

U. S. OF AMERICA,
Massachusetts district.

On the twenty-eighth day of June, A. D. eighteen hundred and fifty-two, by virtue of the foregoing commission to me directed, I caused the deponent therein named to come before me in Boston, in said district, and he being then and there duly sworn by me to testify the truth,

the whole truth, and nothing but the truth, in answer to the several interrogatories thereto annexed, gave the foregoing answers by him subscribed in my presence; and the same were reduced to writing in his presence, by H. L. Hallett, a clerk employed by me for that purpose. And I further certify, that in taking said depositions I conformed in all things to the directions contained in the foregoing commission.

Witness my hand and seal the day and year above written.

B. F. HALLETT,
Commissioner Cir. Court U. S. for Massachusetts district.

Know all men by these presents, that we, Joseph Foster, of Newton, in the county of Middlesex, and commonwealth of Massachusetts, paper-maker, and Seth Dewing, of Needham, in the county of Norfolk, yeoman, are holden, and stand firmly bound unto Adolphus Durant, of Methuen, in the county of Essex, in the full sum of ten thousand dollars, to be paid to the said Durant, his certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we jointly, severally, and respectively bind ourselves, our heirs. executors and administrators, firmly by these presents. Sealed with our seals. Dated this 11th day of August, in the year 1842.

Whereas certain differences have arisen, and are now pending, between the said Adolphus Durant on the one part, and the said Joseph Foster and Seth Dewing, on the other part, in relation to the accounts and dealings of the said Durant, Foster and Dewing, as copartners, under the firm and style of A. Durant & Company, concerning which a suit in equity is now pending in the supreme judicial court in said county of Middlesex, wherein the said Foster and Dewing are plaintiffs, and the said Durant is named as defendant; and bills of particulars of all the legal and equitable claims and demands made, or to be made, by the said Foster and Dewing, or either or both of them, upon account of said copartnership, and all other accounts, have been made and deposited, and are now in the hands of John Tenney, of said Methuen, esquire, to wit: one bill in the name of said Foster, marked A, and six bills of said Dewing, numbered one to nine, inclusive; and the said Durant has in like manner deposited his bill: And whereas, it is now agreed to submit all legal and equitable claims and demands between said parties, and each and every of them, to the arbitration, award, and determination of James C. Merrill and Moses Grant, of Boston, esquires, and Edmund P. Tilestone, of Dorchester, in said county of Norfolk, paper-maker:

Now the condition of the above written obligation is such, that if the above bounden Foster and Dewing, their heirs, executors and administrators, and each and every of them, shall and do, for and on their and each of their parts, in all things abide by, perform, fulfil, and keep the award, arbitrament, and determination and judgment, which shall by them, the said arbitrators, or a major part of them, be made of and concerning the premises so submitted to them, as aforesaid, so as such

award, arbitrament, determination, and judgment of the said arbitrators, or the major part of them, be by them made in writing, under their hands, ready to be delivered to the parties within two months ensuing the date of these presents, unless prevented by the act of God, then the above written obligation shall be void and of no effect, otherwise shall remain in full force and virtue.

In testimony whereof we, the said Joseph Foster and Seth Dewing, have hereunto set our hands and seals the day and year above written.

(Signed) JOSEPH FOSTER, [L. S.]
SETH DEWING. [L. S.]

In presence of JOHN TENNEY.

BOSTON, *Sept.* 27, 1842.

The said parties now agree that the time for making said award, &c., shall be extended sixty days from this date.

(Signed) JOSEPH FOSTER,
SETH DEWING.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To GEORGE S. HILLARD, *of Boston, esquire,*
U. S. Commissioner for the district aforesaid.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Seth Dewing, of Needham, in said district, a witness to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence and al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and said witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this seventeenth day of April, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answers of the deponent to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants to Seth Dewing, of Needham, in said district.

1. What is your age, residence, and occupation?

2. Declare whether or not you have ever been engaged with Adolphus Durant, the complainant in this cause, in the business of paper-making; and if so, when, how long, and where?

3. Declare whether or not you and said Durant and Joseph Foster, of Newton, were partners in said business; if so, when did said partnership commence, how long did it continue, when was it dissolved, and why?

4. Declare whether said business resulted in a profit or in a loss, and to what amount; and whether said Durant, at the time of such dissolution of said partnership, was solvent or insolvent; and state your means of knowledge.

5. Declare whether said Durant, from the time of such dissolution to the year 1843, and during said year, was solvent or insolvent, and what property the said Durant was possessed of, and what debts he owed; and state your means of knowledge.

6. Declare whether or not, at any and what time before said dissolution, or at the time thereof, you had any conversations with said Durant respecting his property or liabilities; if yea, state such conversations, and the time and place of the occurrence, as nearly as you can.

7. If, in your answers to the preceding interrogatories, you shall have stated that said partnership was dissolved in the year 1837, declare whether or not, since that time, you conversed with said Durant upon the subject of his property and liabilities; if yea, how often and at what times have you conversed with him thereon, and down to what time? and state what the conversations, or any of them, were, or the substance

thereof; and where the same, or any of them, took place, if you recollect.

8. If, in answer to the preceding interrogatories, you have said that you have, at any of the times inquired of, conversed with said Durant upon the subject of his property and liabilities, declare whether or not said Durant, at said times or any of them, stated to you that he was solvent, and possessed of sufficient means and property to pay his debts, or insolvent, and unable to pay them; state all he at any time said to you with respect to his ability or inability to pay his debts, as nearly as you can recollect it. Declare when the last conversation took place, so far as you can recollect, between you and said Durant, in which he said anything upon the said subject.

9. Please to examine the certified copy now shown to you by the master, purporting to be a deed from said Durant to one Jesse Sargent, and declare whether or not you are acquainted with the property therein described. Declare whether or not you have conversed with said Durant respecting a sale of said property to said Sargent, and by said Sargent to one Stephen Barker; if yea, when, where, and how often have such conversations been had, as nearly as you can recollect? and state all that was said by Durant on such occasions, or any of them.

10. What, if anything, has said Durant at any time stated to you was his object and purpose in making the said conveyance to said Sargent? Fix the time when said statement was made to you, as near as you can.

11. What, if anything, has said Durant at any time stated to you were the object and purpose of the sale to said Barker? Fix the time when such statement was made to you, as near as you can.

12. Was the sale to said Barker spoken of as a private sale, or a sale by public auction? Were you ever told by said Durant whether or no said Barker paid anything—and if anything, what—for his said purchase; and whether or no said Barker bought and held the property for his own use and benefit, or for the use and benefit of any and what other person or party; and whether or no there was any—and if any, what—agreement or understanding between him and the said Barker and the said Sargent, or between any and which of the said parties, relative to the use and disposition of the said property, other than appeared on the face of the transactions? Declare particularly what, if anything, you were told by said Durant on each of these points, and fix the time as nearly as you can.

13. Whether or no you were ever told by said Durant that said Barker bought the said property at auction by the request of any one, and of whom, and for what purpose; and with what object, if any, the said request was declared to have been made; and who, if any one, was declared to be the real owner of said property after the said auction sale?

14. Whether or no you were ever told by said Durant of any reason why the said property was sold at auction, or of any reason why it was bid off by said Barker? If yea, set forth the same particularly; and declare, as nearly as you can, the time of such conversation.

15. Declare whether or not you have had any conversation with said Durant, since the purchase by the Essex Company of the title of Robert Farley to said property in 1845, respecting the said property; if yea, when, where, and how often, and what, if anything, was at such times said by him respecting said property and said sale to said Barker?

16. Please look at the letter now shown to you by the master, marked A, dated June 12, 1840, and state in whose handwriting it is, and to whom it is addressed, or whether or no you received the same at or near the time of its date, or at any and what other time.

W. H. GARDINER,
By C. G. RIPLEY,
For Defendants.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

DURANT
vs.
LAWRENCE & al. } In Equity.

Cross-interrogatories to Seth Dewing, proposed by the Pltff.

1. If, in answer to the 4th and 5th interrogatories, you say that said Durant was insolvent at the times inquired about, state all your means of knowledge; declare what were his debts, and what his assets, at each and every time at which you declare that he was insolvent?

2. If, in answer to the 6th interrogatory, you say you had any such circumstances as are therein inquired about, be particular and state where the same took place, and who was present thereat?

3. Say whether, or not, you and said Foster, or said Foster in your name, instituted a suit against the said Durant; and if so, state whether, or not, the same was submitted to referees? If you say that there was such a suit, declare whether, or not, the said Durant did, or not, deny his indebtedness to you and to said Foster, and whether he did not claim that a large sum was due on a just settlement of accounts from you and said Foster to him?

4. Say whether, or not, one Rogers acted in said suit as an accountant or as an auditor?

5. If you answer the last interrogatory in the affirmative, declare, as near as you can, the time when said Rogers made up his account, and whether, or not, said Durant acquiesced in, or dissented from, the justness thereof?

6. Where have you lived since 1837?—state all the places in which you have lived since then?

7. What have been your occupations since that time? State them all.

8. Have you not, since said time, had difficulties, differences, and quarrels with said Durant?

9. If, in answer to the 7th interrogatory, you state that you had any such conversations as are therein inquired about, state where said

Durant lived at said time, and where you lived at said time, and whether any one was present at said conversations; and if so, who?

10. Give the date of each such conversation, if any such ever took place, and declare whether you took any minute or notes thereof in writing?

11. If, in answer to the 9th, 10th, 11th, 12th, 13th, 14th, 15th interrogatories, you undertake to say that such conversations as are in said interrogatories inquired about ever took place, be particular and designate, as near as possible, the date of each conversation, the place where was had, and the names of every person present thereat?

12. If you say such conversations took place, say whether you were a creditor, or claimed to be a creditor, of said Durant's, at the time you say they took place; and if so, whether to any and what amount did you claim to be a creditor of said Durant?

13. If you say any such conversations as are inquired about took place, state when you first mentioned them to any person, and give the names of each and every person to whom you mentioned such conversations, and when?

14. Whether, or not, did you obtain judgment on your award against said Durant, and levy the execution in real estate, and was said execution returned satisfied in full by such levy?

15. Whether, or not, did you hold a mortgage, given you by said Durant, upon a Fourdrinier paper machine, which your partnership conveyed to him in 1837, at the price of thirty-five hundred dollars; and was not said mortgage given you, in fact, to indemnify you for partnership liabilities, which were embraced in the subsequent award between you and him?

16. What has become of said mortgaged property? Did you, subsequent to the award, sell the same to Robert Farley, and for how much? What was your bargain with Farley; and have you or your assignee now a suit pending against said Farley in relation to the same; and how much do you or he claim therein for said machine?

17. State what demands were submitted by you to the referees in your suit said Durant, and whether all the demands you and said Foster had against said Durant were not lodged in the hands of John Tenney, esq., of Methuen.

18. Were not the demands—statements of which were left by you and said Foster on the one side, and said Durant on the other side, with said Tenney—all the demands in controversy between you and said Durant, and did they not embrace all that it was intended to submit to the said referees?

19. Did you and said Foster, at any time, meet said Durant before said referees for a hearing?

20. Did you ever receive any notice of a hearing from said referees, and do you know whether the referees ever notified all the parties, or ever had any regular hearing of said parties? Was there ever any trial by and before said referees, and any examination of witnesses, or evidence, or notice to the parties, and in presence of the parties?

21. Do you know how said Rogers, the auditor, made up his account; from what date did he make up the same; whence did he get his information?

22. Did said Rogers ever notify the parties of any hearing, and did he ever meet the parties, or examine them, or examine any vouchers in their presence, or in any way give them the opportunity to explain or control any papers, or otherwise, which he had before him as data from which to make up his account?

S. BARTLETT,
By ED. D. SOHIER.

[The defendants object to the 3d, 5th, 17th, 18th, 19th, 20th, 21st, 22d cross-interrogatories, as seeking to introduce incompetent and irrelevant testimony; and to the 14th, 15th, 17th, and 18th, as seeking to introduce parol testimony of the contents of records and written instruments.

C. G. RIPLEY, *for Dfts.*]

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

Answers of Seth Dewing to the Interrogatories hereto annexed, on the part of the Respondents.

1. To the first interrogatory he says—I am sixty-three years old; I reside in West Needham, and am a farmer.

2. To the second interrogatory he says—I have been engaged with the said Durant in the business of paper-making; it was in 1836 and 1837, at Methuen, and the business was carried on about a year.

3. To the third interrogatory he says—The said Durant, the said Foster and myself, were partners in said business. The said partnership commenced in the early part of 1836, and continued till the tenth day of May, 1837, when it was dissolved, on account of the embarrassments which the business encountered.

4. To the fourth interrogatory he says—The business resulted in a loss of about eight thousand dollars. I considered the said Durant insolvent at the time of the said dissolution. From his representations made to me at the time of the commencement of the copartnership, I considered him to be worth no property, and the business was a losing one, and therefore, at the end of it, he must have been worse than nothing.

5. To the fifth interrogatory he says—I considered him insolvent from the time of such dissolution to the year 1843, and during that year. I do not know of any property he had, except his real estate, machinery, and house furniture, all of which was mortgaged. He owed a debt to R. G. Shaw & Co., of nine hundred dollars, which the copartnership became surety for. He owed a Salem bank four thousand dollars, which was secured by mortgage. He owed Judge Hubbard, on account of the estate of Gardiner Greene, about four thousand dollars, which was secured by a mortgage. He owed his

sister Abagail about a thousand dollars. He also owed the company April 1, 1843, thirteen thousand three hundred and eighty-four dollars and fifty-seven cents. My means of knowledge were partly his own declaration, and partly derived from my business relations with him. The above balance was the result of the account as stated by Mr. Rogers.

6. To the sixth interrogatory he says—I had numerous conversations with the said Durant respecting his property and liabilities, both before said dissolution and at the time of it. I cannot state the exact times. They were sometimes in Methuen and sometimes in Boston. At these conversations he always stated that he was poor and unable to pay his debts. He once used the expression that he owed the whole alphabet. He said that he had been sued a great deal, and did not mean to be sued any more.

7. To the seventh interrogatory he says—I have had conversations with said Durant about his property and liabilities, from the time of the dissolution to the present year. I have had a great many of them. They were generally in Boston; sometimes in Methuen, sometimes in Roxbury. He said that he was without means, and that he had more debts than he could pay. He has often asked me to lend him money to carry on the suit he is now engaged in.

8. To the eighth interrogatory he says—The said Durant never stated to me that he was solvent and possessed of property enough to pay his debts, but has always stated, in substance, that he was insolvent and unable to pay them. He has always spoken in sanguine terms of his expectations from this suit, and another he has. My last conversation with him upon the subject has been within a few weeks.

9. To the ninth interrogatory he says—I have examined the said certified copy of the said deed, and am acquainted with the property therein described. I have frequently had conversations with the said Durant respecting a sale of said property to said Sargent, and by said Sargent to one Stephen Barker. These conversations have generally been in Boston, but sometimes in Methuen. They have been had at various times since the date of the said conveyance. Durant said that he had conveyed it to Sargent to keep it out of the way of his creditors, and that he could have it back any time he wanted it, when he had got his matters settled. He said that he had it sold at auction in order to make the title unquestionable.

[See the end of the deposition.]

10. To the tenth interrogatory he says—The said Durant has said to me that his object and purpose were to keep the property out of the way of his creditors, and that he could not hold property and carry on business. This was first said about the time of the sale, and frequently repeated since.

11. To the eleventh interrogatory he says—Durant said that the object of the sale to Barker was to make the title better. It was for that reason sold at auction, and I think he said that Barker was the only bidder, and that he bid fifteen dollars. He also said that this sale to

Barker was at his, Durant's, suggestion. These statements were first made soon after the sale to Barker, and frequently repeated since.

12. To the twelfth interrogatory he says—The sale to said Barker was spoken of as a sale at public auction. I was told that Barker never paid anything till he got something by way of the Essex Company, and that Barker bought and held the property for the use and benefit of him, Durant. Durant told me that it was understood between him and Sargent, and Barker, that Barker should hold the property for the benefit of Durant. He has told me this many times, but I cannot fix the exact dates.

13. To the thirteenth interrogatory he says—The said Durant has told me that Barker bought the said property, at auction, by Durant's request, of Sargent, for the purposes I have above stated. Durant always said that he could have it whenever he chose to call for it.

14. To the fourteenth interrogatory he says—Durant said that the property was sold at auction to said Barker to make the title good, or to make the title better. He has used both these words. I cannot state the dates.

15. To the fifteenth interrogatory he says—I have had conversations with Durant respecting the said property, since the said purchase by the Essex Company of Farley, in 1845. They have been mostly in Boston, and at various times; I cannot state the exact dates. At these conversations the said Durant has made the same statements respecting the said property, and the sale to Barker, as those which I have before stated. He has always told the same story about its being conveyed for his benefit.

16. To the sixteenth interrogatory he says—The letter now shown to me, marked A, is, I have no doubt, in Durant's handwriting. It is addressed to me; I received it four days after its date, as I have marked it, as I always do my letters.

Answers to the Cross-interrogatories.

1. To the first cross-interrogatory he says: I have already stated in my direct examination all my knowledge in regard to the matters inquired of in this interrogatory, except that Durant owed a debt to Hayward and Norton at the time of our dissolution of about fourteen hundred dollars, which he told me subsequently was paid. At the time of the dissolution he also owed some debts for family expenses. These things I learned from him. Mr. Norton also told me of the debt to Hayward & Norton.

2. To the second cross-interrogatory he says: I cannot state where the said conversations took place any more fully than I have already done. They were generally between us alone, but Mr. Foster was sometimes present, and perhaps sometimes others also.

3. To the third cross-interrogatory he says: A suit was instituted in the name of Foster and Dewing, or Dewing and Foster, against said Durant, and it was submitted to referees. The said Durant never claimed that a large sum was due to him from Foster and myself, to

my knowledge. He said that if he had had the management, and had had his way in the business, he should have conducted it without a loss, but as it was he never denied his indebtedness. I told him, in reply to his remarks, that he had had the management in everything.

4. To the fourth cross-interrogatory he says: The said Rogers did act as accountant in said suit.

5. To the fifth cross-interrogatory he says: The said Rogers made up his account April 1, 1843. After the result was reached, Durant dissented from the justness thereof.

6. To the sixth cross interrogatory he says: I have lived in Needham since 1837, but most of the time have had business in Boston and its vicinity.

7. To the seventh cross-interrogatory he says: I have been engaged in farming, more or less, all the time. I was a city surveyor of lumber for about seven years, after 1835. I have been engaged in the settlement of an insolvent estate, that of Shubael Bills, of whom I am assignee. I have had a good deal of business as an agent for managing real estate. I am now occupied in these several employments, and am also manufacturing and selling a patent soap.

8. To the eighth cross-interrogatory he says: I have had no quarrel with the said Durant. I have had a difference with him about the balance of our account, and a lawsuit.

9. To the ninth cross-interrogatory he says: The said Durant lived in Methuen, and I lived in Needham, but we usually met in Boston. I come into Boston nearly every day. These conversations were generally between us alone. In the early part of this period Mr. Foster was sometimes present. Mr. Erastus Buffum has sometimes been present at these conversations during the last two or three years.

10. To the tenth cross-interrogatory he says: I cannot give the dates of these conversations, and cannot say that I ever took any minutes or notes thereof in writing.

11. To the eleventh cross-interrogatory he says: I cannot answer this question more fully than I have already done, except that these conversations took place sometimes at the Franklin House, sometimes at the New England House, sometimes at my counting-room in Sea street, and sometimes in the street.

12. To the twelfth cross-interrogatory he says: I did claim to be a creditor of the said Durant, to the full amount of the balance declared by Mr. Rogers, until the award, which reduced it.

13. To the thirteenth cross-interrogatory he says: I do not remember to whom, nor when, I mentioned these conversations.

14. To the fourteenth cross-interrogatory he says: Foster and I obtained judgment on our award. The execution was levied on real estate, by Mr. Foster's direction, and, by the copy, it appears to have been returned satisfied in full, but Durant declared he never owned the property, but that it belonged to his wife.

15. To the fifteenth cross-interrogatory he says: I answer this question in the affirmative.

16. To the sixteenth cross-interrogatory he says: The said mortgage property has been transferred to Robert Farley. The bargain was that Farley should take the title of Durant's real estate, and he and I should divide the property, and I gave him the mortgage of the machine to fall back upon, in case of failure of title. My assignee has brought an action against said Farley and Otis Daniel, in relation to the same, in which damages are laid at fifty thousand dollars, I think.

17. To the seventeenth cross-interrogatory he says: All the copartnership demands were intended to be submitted to the referees. I have no recollection that our demands were lodged in the hands of Mr. Tenney, but cannot say that they were not.

18. To the eighteenth cross-interrogatory he says: I have no recollection about any demands being left with Mr. Tenney.

19. To the nineteenth cross-interrogatory he says: We did meet said Durant before the referees for a hearing.

20. To the twentieth cross-interrogatory he says: I have no recollection of receiving any notice of a hearing from said referees, but have no doubt that I did. I do not know whether the referees ever notified all the parties, but all the parties were present before them more than once. The referees heard what the parties had to say, and examined Mr. Rogers.

21. To the twenty-first cross-interrogatory he says: The said Rogers had all my books and vouchers, and I suppose he had all Durant's; and from these he made up his account.

22. To the twenty second cross-interrogatory he says: The said Rogers did notify me to attend, and I have attended and made explanations. I think I have seen Durant before him. Durant has told me that he has been before him.

I wish to state further, in answer to direct interrogatory number 9, that on one occasion, when Durant and I were alone, he said that he would as lief tell me all about the conveyance as not, because there was no one present that would be able to prove anything he said. This was at the New England House, but I cannot tell the exact time.

SETH DEWING.

UNITED STATES OF AMERICA,
Massachusetts, ss.—City of Boston:

On the thirteenth day of May, A. D. 1852, the aforesaid deponent, Seth Dewing, came before me, and I then carefully examined him on oath touching the premises, and in reply to the interrogatories hereto annexed, and his examination so taken was reduced to writing by me, and by the said deponent subscribed in my presence. This deposition is taken by virtue of the commission hereto annexed, and in reply to the interrogatories thereto annexed; and all the directions contained in the said commission were carefully observed by me in executing the same.

GEO. S. HILLARD, *Commissioner.*

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss:*

To GEORGE S. HILLARD or CHARLES L. WOODBURY, *of Boston, Esquires, U. S. Commissioners for the district aforesaid.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Thomas J. Richardson, of Lawrence, and J. G. White, of Methuen, in said district, witnesses to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents, whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents, in their order, and take the answer of the deponents to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants, to Thomas J. Richardson, of Lawrence, in said district.

1. What is your name, age, residence and occupation?
2. Do you know the said Durant; and if so, how long have you known him?
3. Declare whether, or not, you at any time owned, and if so, whether you have since sold to any and what person, either and which of the parcels of real estate situated in that part of Methuen now called Lawrence, described in the schedule annexed, marked A? If yea, state particularly what the same was, what buildings, if any, there were on the same, and what water-power or mill privilege, and what machinery, if any, was connected therewith, and have since been sold by you; and what was the date of the deed, if any deed thereof has been executed and delivered by you; and for what consideration did you sell the same, and how was the same paid?
4. Declare how long, prior to your said sale, you yourself had been possessed of said property, and how you became possessed thereof, whether by purchase, or how otherwise; and if by purchase, how much you paid therefor, and of whom you purchased it, and what buildings there then were on the same; and what, if any, improvements you made thereon while in your possession?
5. Declare what use you made of said premises while you owned the same: whether the said use resulted in a profit to you, or in a loss; and what profit or loss resulted therefrom?
6. Are you, or not, familiar with the premises described in said schedule A; have you had any and what opportunities of becoming acquainted with the value of lands and water-power and privileges in said Lawrence; were you, or not, conversant with the value of such property in the years 1843 and 1844, and prior to the commencement of the works of the Essex Company in June, 1845?—if yea, what was the value of the property described in said schedule during the time inquired of?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

The plaintiff objects to so much of each of the foregoing interrogatories as calls for the contents of written documents.

S. BARTLETT,
By E. D. SOHIER.

(Copy.)

A

The following described pieces of land lying in said Methuen, with the buildings thereon, viz: the piece of land with my dwelling house and barn thereon, containing about six acres, bounded northerly by Spicket river; easterly by the county road; southerly and westerly by land of Merrill Gage. Also another piece of land lying eastwardly of the above described, on the opposite side of the road, containing about ten acres, with a mill and water privilege thereon, bounded, beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill; thence easterly by said Merrill's land in Spicket river; thence northerly and westwardly by said river to the stone bridge at said road; thence southerly by said road to the first bound; with all the rights of flowing and other privileges appertaining to the same. Also, one other piece of land lying southerly of the last mentioned, bounded northerly by land of Daniel Merrill, eastwardly by Spicket river, southerly and westerly by land of said Merrill. Also, one other piece of land containing about half an acre, lying on the easterly side of said river, bounded, westwardly by said river; southerly, easterly, and northerly by land formerly of Enoch Poor. Also a road two rods wide leading from the town pond through land of said Merrill to the two last described pieces of land, with a paper-mill standing upon them, with the rights of flowing, building a dam, and all other rights and privileges, subject to the reservations as set forth in the deed of the same from Abraham Marland, dated Nov. 4, 1840, recorded book 329, leaf 73.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Cross-interrogatories in Plaintiff's behalf to Thomas J. Richardson.

1. Please to state what experience you have had since the year 1842 in the purchasing and selling of real estate in Lawrence; state each purchase and each sale you have made since that time?

2. Had not the value of lands in that part of Methuen, now called Lawrence, greatly increased in the month of April, 1845?

3. Had not all the land on the south side of Spicket river, and east of what is now called Jackson street, greatly increased in value in April, 1845?

4. Did you know the fact that Messrs. Lawrence, Saunders, and Nesmith, or that an association whereof said persons were members, commenced purchasing land in said Methuen on or about the month of April, 1845?

5. Did not the value of lands in said place greatly increase at or about the time said persons commenced purchasing?

6. What experience had you in the years 1842, 1843, and 1844, in the purchasing, valuing, or conducting of paper manufactories? What was your business during said years; if you say it was the blacksmith business, state what kind of blacksmith business, and whether it did not principally consist in shoeing oxen?

SYDNEY BARTLETT.
By ED. D. SOHIER.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE and al. } In Equity.

Interrogatories on the part of the Defendants to J. G. White, of Methuen, in said district.

First.—What is your name, age, residence, and occupation?

Second.—Declare whether, or not, you collected any and what taxes assessed, for the years 1842 and 1843, upon the premises described in the paper hereto annexed, and marked A? If yea, what amount did you collect in each year, and of whom, and by whom was the same paid to you, and when?

C. G. RIPLEY, *for Defdts.*

Josiah G. White, of Methuen, of lawful age, being duly sworn, did depose and say as follows:

To the first interrogatory.—My name is Josiah G. White; age fifty-two years; reside at Methuen; a shoe manufacturer.

To the second interrogatory.—In the year eighteen hundred and forty-two, Adolphus Durant was assessed the following taxes in Methuen: Poll tax, ninety-two cents; real estate, thirty-three $\frac{60}{100}$ dollars; personal, six $\frac{51}{100}$ dollars; whole amount, forty-one $\frac{32}{100}$ dollars; four per ct. discount, amounting to one $\frac{64}{100}$; paid Oct. 11th. In 1843 he was assessed one poll, one $\frac{7}{100}$ dollars; real estate, thirty-seven $\frac{44}{100}$ dollars; personal, five $\frac{62}{100}$ dollars; whole amount, forty-four $\frac{13}{100}$ dollars; paid real estate tax January 6, 1844; the personal tax was paid before March meeting. I was tax collector for Methuen during the years eighteen hundred and forty-two, three, and four. The real estate I understand to have been that where he resided. Exhibit A is not before me. The taxes in 1843, I remember, he paid me personally. I presume he paid me himself the taxes of '42 also.

JOSIAH G. WHITE.

And the said deposition being read over to him, was by him signed on the twenty-seventh day of March, 1842, and all the other requisites of this commission complied with. Witness my hand and seal.

CHAS. LEVI WOODBURY,
U. S. Commissioner.

On this third day of April, 1852, before me came the above signed witness, and desired to correct his foregoing answer, which he did as follows:

Since the 27th of March I have had a conversation with Mr. Durant on the subject of my testimony here, and was shown by Mr. Durant my receipt for the taxes for 1843 on the real estate, schedule A. I annex a copy of said receipt, and amend my foregoing answer, by stating that the said taxes were paid me by Stephen Barker, esq., and the annexed is a true copy of the receipt by me given him on the occasion.

J. G. WHITE.

Sworn to, subscribed, and reduced to writing by me, in compliance with all the terms of the commission—day and year above.

CHAS. LEVI WOODBURY, *Commissioner.*

Exhibit testified to by J. G. White.

C. L. W., *U. S. Commissioner.*

METHUEN, *Jan'y 6th*, 1844.

To ADOLPHUS DURANT:

Your real estate tax for the year 1843, is - - -	$37 44
Cost for advertising, &c. - - - - - - -	1 88
	$39 32

Received payment, by Stephen Barker, esq.

J. G. WHITE, *Coll. and Treas.*

Deposition of Thomas J. Richardson.

And on the thirtieth day of March, Thomas Jeff. Richardson, a witness for the defendants, came before me, and being duly sworn, did depose and say as follows, in answer to the interrogatories:

To the 1st interrogatory.—Thomas J. Richardson, Methuen; occupation, a trader in dry goods and groceries; age, fifty years and upwards.

To the 2d interrogatory.—I know a man by the name of Adolphus Durant, and think I became acquainted with him about 1826; am not sure of the exact time.

To the 3d interrogatory.—I never owned the house-lot on the ten-acre lot described as on the opposite side of the road to it. I once owned a right in the half-acre tract described as being bounded on three sides, by the land of Enoch Poor, the right of way from the main road in and through Merrill's land, and the lot which we had of Marland. The tract described as "the other piece of land lying southerly of the last-mentioned," bounded northerly by land of Daniel Merrill, and eastwardly by Spicket river, &c., as in exhibit set out.

These two tracts constituted a mill privilege and right of way thereto, which Mr. Churchill and myself purchased of Abraham Marland. We built a paper-mill there and a dam; sold out a right of one-third to some young men by the name of Campbell; there was about seven

and a half feet of head and fall; we put three sets of engines in our paper-mill, but there was not power to carry more than two sets generally. I think there was no other building except the paper-mill; about seven and a half acres of land. We purchased this tract of Abraham Marland in 1835; gave him a mortgage thereon; and in 1837 he asked us to give up possession of the property, which we did. Can't say if we had a right of redemption after. We signed a paper giving him possession; can't speak accurately of the terms in detail. After we had given him possession, I took a lease from him, and again occupied the premises until 1840. I think no deed was made; the sum due on the mortgage was two thousand dollars, and some interest; he received it for that sum.

To the 4th interrogatory.—We purchased in 1835. The land and water privilege we were to pay one thousand dollars for; Marland was to advance another thousand dollars to enable us to build the mill, which sum also was included in the mortgage. Besides this, Churchill turned in his own work for seven months, at nine shillings a day, forty dollars in cash, and some board for hands, about fifty dollars worth; I turned in about twelve hundred dollars; the Campbell's turned in about one thousand dollars more; some scattering debts were due after this, so that I estimated the whole cost of mill, land, and privilege, to be not far from five thousand dollars; this includes the machinery.

To the 5th interrogatory.—We used them to manufacture wrapping paper. I don't think it paid to carry on; and in the end I lost all that I put in there.

To the 6th interrogatory.—In 1843 and 1844, the value of the property I had owned was considerably reduced; without the anticipation of the company coming there, it might be worth some three thousand dollars.

Mr. Durant called on me about last August, and asked me what I thought the value of the upper mill and property. I said I should have to consider. Since then I have reflected on it. I should suppose the house and lot where he lived, the ten-acre lot with the mill, privilege, and fixtures, exclusive of the machine to make paper, and the steam apparatus connected therewith, would have been worth, in 1843 & '4, seven thousand five hundred dollars.

To the 1st interrogatory.—I have not purchased or sold any, as inquired.

To the 2d interrogatory.—I think it had increased some at that time.

To the 3d interrogatory.—I should think it had.

To the 4th interrogatory.—I know there was a story going that Mr. Saunders and others were trying to purchase lands.

The lands about there greatly increased in value in consequence of their purchasing.

In the years 1842 and 1843, I was not in the paper business; I was then in the blacksmith business; it was the usual blacksmith work of a farming town. I remained in this business during 1844. I did nothing with regard to paper manufacturing during these years.

THOMAS J. RICHARDSON.

And the same being by me reduced to writing in the presence of said witness, was read over to and by him, signed in my presence, and all the other requisites of said commission carefully complied with.

In witness whereof, I have hereunto set my hand and seal, this thirtieth day of March, in the year 1852.

CHAS. LEVI WOODBURY,
U. S. Commissioner.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To GEORGE S. HILLARD, esq.,
U. S. Commissioner, residing in Boston, in said district.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Benjamin Robbins Curtis, esq., a witness to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witness as aforesaid to be brought before you, and said witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-one.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person

(if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants in the above cause, to Benjamin R. Curtis, esquire, of Boston, in said district.

1. What is your name, age, residence, and occupation?

2. Declare whether or not you have heretofore perused the bill and answers in this cause, and whether or not you are acquainted with the parties and subject-matter thereof.

3. Declare whether or not you were formerly, and about what time, of counsel for the Essex Company in any suit or suits in equity, wherein Robert Farley and Joseph Foster, or either of them, were parties or a party defendant, and the said Essex Company was the party complainant, relating to the same lands which are mentioned in the present bill, or some part thereof, and wherein the right to redeem the same from certain mortgage formerly made by Adolphus Durant, the complainant in the present bill, was adversely claimed by the said Essex Company and the said Robert Farley, as derived to them respectively from the said Durant through divers mesne conveyances.

4. If you shall have answered the next preceding interrogatory affirmatively, please state through what deeds or other mesne conveyances the said Essex Company claimed to derive its right in equity to redeem the said mortgaged premises, and through what deeds or other mesne conveyances the said Robert Farley claimed to derive his right in equity to redeem the same; and whether or not, in any such suit or suits, the said parties were at issue concerning their respective rights of redemption; and upon what fact or facts, if any, to be proved by oral testimony, the validity of their respective titles was supposed by you to depend; and in what court the record of the pleadings and evidence, if any, in said suit or suits may be found.

5. Whether or not the said Durant was, to your knowledge, informed of the pendency of said suit or suits, and informed to any and what extent of the grounds on which the respective parties claimed to test the titles by them respectively alleged, and of the nature and kind of evidence necessary to determine the principal matters in issue, or any of them?

6. Whether or not the said Durant was, to your knowledge, to any and what extent informed of the rule of law concerning the competency and admissibility of witnesses interested in the event of a suit?

7. Whether or not the said Durant, to your knowledge, pending the said suit or suits, and after he was acquainted with the pendency thereof, claimed or asserted, and, if at all, in what manner, that he had or had not any right, title, interest, or claim at law or in equity; and, if any, what in or relating to the lands to which the said suit or suits related, or any trust in his favor of or concerning the same, or any contract with him relative thereto; or that any fraud had been committed or attempted against him by any person relative to the said lands; or that any other right whatsoever, legal or equitable, of the said Durant, on the subject-matter of said suit or suits, was implicated therein? If yea, state precisely what was claimed or asserted respecting the same.

8. Whether, or not, pending the said issue, you had any conference or conferences with the said Durant concerning the same, and concerning his competency on the score of interest in the subject-matter of said suit or suits, to be a witness for the said Essex Company, to testify to any fact or facts tending to establish the validity of the title claimed by said company adversely to the title claimed by said Farley?—if yea, state how the said conference or conferences arose; and what, if anything, was said by you and the said Durant respectively, relatively to the subject of his testifying in the said suit or suits? Please narrate the conversation fully, and each conversation, if more than one; and state when and where the same was held, and all that passed thereat, without further interrogatory?

9. If you shall have testified to any such conversation or conversations as aforesaid, please to declare whether, or not, any action was had, bounded thereon; or whether the said Durant did, or did not, offer himself as a witness; for which party and to what point; and whether the said Durant did, or did not, in fact, deliver his testimony in said cause?

10. Whether, or not, you were at any time, and when, consulted in behalf of the said Essex Company, relative to the expediency of terminating the said suit or suits with the said Farley, by purchasing his title to the said lands?—and if yea, what advice, if any, did you give in the premises?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

Answers of the Honorable Benjamin Robbins Curtis to the Interrogatories hereto annexed.

1. To the first interrogatory he says—My name is Benjamin Robbins Curtis. I am forty-two years old. I reside in Boston, and am one of the Justices of the Supreme Court of the United States.

2. To the second interrogatory he says—I have heretofore perused the bill and answers in this cause, and am acquainted with the parties and subject-matter thereof.

3. To the third interrogatory he says—I drew the bill by which the

suit referred to was instituted, and was of counsel for the Essex Company during the progress and until the determination of the litigation. The particular date when the bill was filed I have not the means at hand of fixing, but it may be found by reference to the record.

4. To the fourth interrogatory he says—The record of the suit should be in the supreme judicial court of Massachusetts, for the county of Essex, and I believe that record states more fully and accurately than I am able to do what the respective title-deeds of the parties were, and on what extraneous facts the validity of those titles depended. It was a bill to redeem certain mortgages. The principal question to be tried was, whether the Essex Company, the complainant, or Farley, the defendant, was the owner of the equity of redemption of certain lands which are the subject-matter of this suit. Farley claimed to be the owner of the equity of redemption through a sale and a conveyance thereof by Durant's assignee in insolvency. The Essex Company claimed the same equity of redemption through a conveyance from Durant himself, made prior to his insolvency; and the question to be tried was, which of these was the better title. My understanding of the case was, that if the conveyance from Durant under which the Essex Company claimed, was either fraudulent as against creditors, or was made by him at a time when he intended to take the benefit of the insolvent act of Massachusetts, and obtain his discharge, the title of Farley was the better title; otherwise the title of the Essex Company, being the elder in point of time, was the better. This, I believe, sufficiently explains my view of the matters in controversy between the parties.

5. To the fifth interrogatory he says—Durant was informed of the pendency of the suit. He was sent to me by Mr. Storrow, the treasurer and general agent of the Essex Company, as the person who had the best information concerning the facts in controversy. I remember making many inquiries of him concerning these facts, and though I do not recollect stating to him the precise points on which the controversy turned, I do remember that, so far as his own interest and acts were concerned, I did make known to him that they were material.

6. To the sixth interrogatory he says—He was informed by me that a person interested in the event of a suit was not a competent witness.

7. To the seventh interrogatory he says—I found it material, as I thought, to examine said Durant as a witness in the case. Before doing so, I sent for him to come to my office, and he came. Having made inquiries of him concerning the subjects on which I proposed to take his deposition, I asked him if he had any interest in the property which was in dispute, stating to him at the same time that my motive for making the inquiry was, to learn whether he was a competent witness. He said he was not interested in the property. I told him it was not enough that he had not any deed or writing giving him an interest; that if he had any contract with anybody, by which any part of the property or its proceeds, if recovered, would be received by him, that would render him interested; and that a reason why I made the inquiry thus particularly was, that I did not know but that he might

have some interest indirectly in the property. He replied that he had no contract with any person concerning it; that something had passed between himself and Mr. Samuel Lawrence, from which he believed that if the Essex Company should recover the property, and found the cost of it to be such that they could afford to give him something, it would be done; but that this rested entirely on the honor and liberality of Mr. Lawrence. In stating this conversation, I do not pretend to give the words, but feel confident that the above is the substance of it. I informed Mr. Durant that under these facts he was a competent witness, and his deposition was taken.

8. To the eighth interrogatory he says—I believe I have fully answered this interrogatory, except as to the time and place when the conversation occurred. The place was my office, No. 16 Court street; and the time was shortly before the said Durant gave his deposition, the date of which will appear by reference thereto.

9. To the ninth interrogatory he says—I have already stated that the said Durant gave a deposition on behalf of the complainant. I cannot say that he offered himself as a witness, because I have no doubt he was sent for to come to my office, and was told by me where he was to go to give his deposition. The points on which he was to testify appear by the interrogatories which he answered when he gave his deposition.

10. To the tenth interrogatory he says—I was thus consulted, and advised the Essex Company to purchase Farley's title for a sum of money, the amount of which I do not now recollect distinctly, but my impression is it was twelve thousand dollars or thereabouts. Having been informed that this had been done, the litigation was terminated in the manner the record of the case will show.

B. R. CURTIS.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.—City of Boston.

On the 26th day of November, A. D. 1851, the aforesaid deponent came before me, and while present before me I examined him on oath touching the premises, and in reply to the interrogatories hereto annexed; and the examination, when taken, was reduced to writing by me, and subscribed by the deponent in my presence. This deposition is taken by virtue of the commission hereto annexed, and all the directions therein contained were carefully observed by me in executing the same. GEO. S. HILLARD, *Commissioner.*

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To GEORGE S. HILLARD, *of Boston, esquire, U. S. Commissioner*, or CHARLES L. WOODBURY, *esquire, U. S. Commissioner.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and

empower you to take the answers to the interrogatories hereunto annexed of Nathan W. Hazen, of Andover, in said district, esquire, a witness to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and said witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and fifty-two

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

DURANT
vs.
LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants, to Nathan W. Hazen, of Andover, in said district, Esquire.

1. What is your name, age, residence, and occupation?
2. Do you know the parties to the above cause, any or either of them?
3. If you say you know the said Durant, state how long you have

known him, whether intimately or otherwise, and what dealings or connection you have had with him?

4. Whether, or not, in the years 1842 and 1843, or any and what part thereof, you had any knowledge of the pecuniary condition and responsibility of said Durant? If yea, state.

5. What the same were, according to your best knowledge, during said years, or such parts thereof as you may have specified?

6. Was, or was not, the said Durant, in the year 1843, indebted to you?—if yea, when; how did said debt arise, and what was its amount? Did you ever, and if so, when, request said Durant to pay the same, and has the same been paid or not?

7. Declare whether, or not, you were retained by Joseph Foster, of Newton, a creditor of said Durant, as his counsel, to oppose said Durant's discharge in insolvency, and whether or not you did oppose it, and when, and where, and on what grounds?

8. If you shall have stated, in answer to the foregoing interrogatory, that you attended as counsel for said Foster, upon a hearing held before Judge Wilde, at Boston, upon said Durant's appeal from a decision of the master in chancery, refusing a certificate of discharge to said Durant, to oppose said application of said Durant, state at what building or room said appeal was heard, and who were present, and how long said appeal lasted, and all the grounds upon which you opposed his said application?

9. If you shall have stated that said Durant was present, state whether or not he was examined upon oath by yourself, or any one else, and whom, on behalf of said Foster, and upon what subjects?

10. If you say said Durant was examined upon oath, touching a conveyance of real estate made by him to one Jesse Sargent, in the spring of 1843, please to state all that said Durant then stated respecting said transaction, as precisely as you can, and describe particularly the property so conveyed; and whether or not said transaction was relied on by you as a reason for opposing said Durant's discharge; and if so, why? What opinion or decision did said judge give in said case?

11. Declare whether, or not, you know Stephen Barker, of Methuen; and whether, or not, said Barker had been summoned as a witness at said hearing for said Foster; and whether, or not, he was present at said hearing; and whether, or not, he left the room during the said hearing?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

The plaintiff objects to so much of these interrogatories as calls for the ground on which the witness opposed the granting of said Durant's discharge.

S. BARTLETT,
By EDWARD D. SOHIER.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Cross-interrogatories in behalf of the Plaintiff, to Nathan W. Hazen.

1. If, in answer to the defendants' interrogatories, you have said that you opposed said Durant's application for a discharge before Judge Wilde, state whether you did, or not, take minutes of the evidence and proceedings; and if yea, please produce and annex them, or true copies thereof, to your answer.

2. If you say said Durant was examined upon oath before Judge Wilde, say whether you took minutes of his testimony; and if yea, produce and annex such minutes to your answer. If you say you have not got them, declare when you last saw them, and in whose possession.

3. Was not John Tenney, esq., present at the said hearing before Judge Wilde, as a witness summoned by you? Is he a professional man, and did he attend the whole hearing, and was he examined as a witness? If you have no minutes of the evidence given, will you state whether said Tenney and James Durant, brother of the plaintiff, were examined by you, and did not testify that within six months prior to the plaintiff's application to be declared insolvent, he had paid or secured to each, or to one of them, an antecedent debt; and did not the judge thereupon declare, that however honorable such payment might have been, it constituted, in law, a fraud upon the act, which must deprive the plaintiff of his discharge?

4. Did Judge Wilde, in refusing said discharge, refer in any manner—and if so, state his words—to any conveyance by the plaintiff to Sargent?

5. Was one word said, either by the witnesses or in the course of the examination of said Durant, about any conveyance from him to Sargent? If so, state every word that was said, and by whom, and whether you have *an* confidence in your accuracy.

6. Are you, or have you been, in the employment of the Essex Company, or in that of any of the present defendants, or of any person acting for them in getting up the testimony, seeing the witnesses, or preparing any part of the defence in this case, and do your fees in any manner depend on your success, or in the result of the case?

7. Are you directly or indirectly interested in the stock of the Essex Company?

8. If, in answer to the 4th interrogatory, you undertake to state any knowledge of yours of the pecuniary condition or responsibility of said Durant, state acccurately and minutely, and particularly, every fact within your personal knowledge in relation to such pecuniary condition or responsibility; state the dates of each fact or occurrence with pre-

cision, and how you know the same; or whether, in answer to the defendant's 4th interrogatory, you have merely given your opinion?

9. If, in answer to the 6th direct interrogatory, you say Durant was indebted to you in 1843, state the exact dates when such debts occurred; were they for professional services; had he paid you therefor about the sum of fifty dollars, and had he any reason to believe that said sum was not an adequate compensation for all such services?

S. BARTLETT,
By ED. D. SOHIER.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Additional Interrogatories on the part of the Defendants, to Nathan W. Hazen.

First. If you say that you took minutes of any examination above inquired of, please state whether the same were intended as a report of all that was said, or as short notes on particular points, to aid your memory in argument, or for what other purpose and object the same were taken.

Second. If you have not already stated what was said by Judge Wilde in refusing the discharge, please give his words as near as you can recollect them, and declare whether, or not, they were used in a connection which referred them to any particular part of the evidence before him, and if so, what, or to the evidence generally in the case, or how otherwise?

W. H. GARDINER, *for Defts.*
By C. G. RIPLEY.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

To the additional Interrogatories on the part of the Defendants.

To the first. They were very brief notes, taken without much care, and for my immediate use.

To the second. I have stated upon that subject as fully as I can recollect.

NATHAN W. HAZEN.

And the foregoing answers having been by me reduced to writing, and read over to the witness, were by him signed in my presence; and I further certify that all the directions in the commission contained were by me complied with.

Witness my hand and seal.

CHAS. LEVI WOODBURY, *Commissioner.*

CIRCUIT COURT OF UNITED STATES,
District of Massachusetts.

In pursuance of the foregoing commission, I caused Nathan W. Hazen to come before me on the nineteenth day of March, 1852, and the said Hazen, being by me duly sworn, did depose and say:

Nathan W. Hazen's Deposition.

To the 1st interrogatory he answers—My name is Nathan W. Hazen, of Andover, Massachusetts; aged fifty; an attorney by profession.

To the 2d interrogatory he says—I know Mr. Durant.

To the 3d interrogatory—I have known him fifteen years, rather intimately, and for several years was from time to time professionally employed by him.

To the 4th interrogatory—I had at that time a general knowledge of his pecuniary affairs. I think he was then, and had been for some years, insolvent.

To the 5th interrogatory—I refer to the preceding answer.

To the 6th interrogatory—He was indebted to me for professional services and moneys advanced by me therein, wholly in amount, I should say, from one to two hundred dollars. Some time in, or previous to those years, I called on him to pay me something on account; he did not then do so, or has he since then.

To the 7th interrogatory—I had been counsel for Mr. Durant, in a suit in equity, brough against him by Mr. Foster; after the termination of that suit Mr. Foster applied to retain me to resist the discharge of Durant in insolvency, upon a petition presented by the late Judge Ward, as counsel for the petitioner. I did, as Mr. Foster's counsel, oppose the discharge; the final hearing was before Judge Wilde in the judge's lobby, at the court-house in Boston, in the spring of 1844, as I think, after the May term in Essex. I think the grounds of opposition were preferences in payments, and fraudulent conveyance of real estate in contemplation of insolvency. The files of the court, however, can give the grounds better than my memory, probably.

To the 8th interrogatory—I have already answered the first part of this interrogatory. There were present John Tenney and Stephen Barker, esquires, Mr. Durant, Mr. Joseph Foster, one, two, or more of Mr. Durant's workmen—I do not remember their names—Judge Ward and myself; the hearing lasted, perhaps, two hours; the examination was not long. I do not recollect distinctly any other grounds than those I have previously mentioned.

To the 9th interrogatory—Mr. Durant was examined under oath, as I presume, although I do not now remember having seen him take the oath, yet I have no doubt the proceedings were regular by myself, on behalf of Foster, upon the subject of payments to his workmen before presenting his petition, and upon the subject of a conveyance of real estate to Sargent or Barker, with a bond to himself for an account or reconveyance.

To the 10th interrogatory—Mr. Durant stated that he had conveyed to Mr. Barker or Mr. Sargent the title to his real estate, his residence, and paper-mill in Methuen, and that he had taken or held a bond for an account or the reconveyance of the same; the bond was not produced; I think Durant said that he did not have it with him; the examination made it very clear that Mr. Durant was not entitled to his discharge; there was no argument of counsel; no opinion at length was given by the judge; the counsel for the petitioner seemed to admit that he was not entitled to his discharge. I think the case mainly turned upon the fact of a fraudulent conveyance.

To the 11th interrogatory—I know Mr. Barker; he was present at the hearing, and I think he was summoned as a witness for Mr. Foster. I think he was present at the whole hearing.

To the Cross-interrogatories.

Cross-interrogatory 1.—I took very brief notes of what was said; I have not got them with me; I had no notice to produce them.

Cross-interrogatory 2.—I think they are in my possession at Andover; I think I saw them some time last summer.

Cross-interrogatory 3.—John Tenney, esq., was present, I think, summoned by Mr. Foster; he is an attorney; I think he attended the whole hearing. I think James Durant and Mr. Tenney were both examined; I am not certain as to the facts testified to by them; I do not recollect such a declaration by Judge Wilde.

Cross-interrogatory 4.—I have stated before that there was very little said by Judge Wilde. I do not remember his referring to the conveyance inquired of.

Cross-interrogatory 5.—I have stated in my answers in chief what I know upon this subject. I am confident that the subjects of reference and of fraudulent conveyance were both before Judge Wilde, but as to the precise degree in which either of them affected the decision by him I am not certain.

Cross-interrogatory 6.—I have conversed with Mr. Ripley on the subject of this case, and have given him what information I possessed, and the names of persons whom I thought knew of the matters. Mr. Ripley told me that if I would aid them in the suit they would pay me for any trouble that I was at in so doing, but I have done nothing in the case for which I have made any charge. I have no fees in the case, except as a witness to-day, depending on the result of the case or otherwise.

Cross-interrogatory 7.—I am not, that I know of.

Cross-interrogatory 8.—My answer was that I had a general knowledge in the matter.

Cross-interrogatory 9.—I had previously to 1843 been employed by Mr. Durant in several important suits. I think he made me a payment, and paid something to Mr. Cummings in my absence, much less in all, I think, than fifty dollars. He had no reason, that I know of, to think these payments an adequate compensation, and I think he knew it was not.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To GEORGE S. HILLARD, *of Boston, in said district of Massachusetts, esquire, Commissioner of the U. S. Courts, Massachusetts district.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Robert Farley, John T. Morse, and William Beals, all of Boston; Josiah Dearborn, of Methuen, Jacob Howe, of Haverhill, and E. H. Safford, also of Haverhill, and Ephraim Brown, jr., of Salem, all in said district of Massachusetts, witnesses to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence et al., respondents:

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this seventeenth day of January, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answer of the deponents to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE and al. } In Equity.

Interrogatories on the part of the Defendants to Robert Farley, of Boston, in said district.

1. What is your name, age, residence, and occupation?

2. Please look at the deed now shown to you, purporting to be a mortgage from Durant to Marland, and at the deeds thereon endorsed, purporting to be assignments from the said Marland to you, and from you to the Essex Company, and state whether, or not, you recognise the same as an original paper formerly in your possession; whether, or not, you were a purchaser of the said mortgage, and at or about what time, and how much you paid therefor, and to whom; and whether, or not, this is the original deed and assignment from said Marland which you received in consideration of the said payment; and whether, or not, you afterwards sold the same mortgage to the said Essex Company; and whether, or not, you recognise and identify as your signature and deed the deed purporting to be your assignment of the said mortgage to said Essex Company, and at or about what time was the same made and delivered; how much was then due upon the said mortgage, and how much did you receive for said assignment?

3. Please look at the deed now shown to you, purporting to be a deed from Saml. Hubbard and others to you, and state whether, or not, you recognise the same as an original paper formerly in your possession; whether, or not, you were a purchaser from the grantors therein named of the property, rights, and interests which said deed purports to convey; and at or about what time, and how much you paid therefor, and to whom; and whether, or not, this is the original deed of assignments which you received from said grantors in consideration of the said payments.

4. Please look also at the deed now shown to you, purporting to be a deed from Joseph Foster to you, and declare whether, or not, you recognise the same as an original deed formerly in your possession; whether, or not, you were a purchaser from said Foster of the property, rights, and interests which said deed purports to convey; and at or about what time, and how much you paid therefor, to whom, and whether, or not, this is the original deed of conveyance which you received from said Foster in consideration of the said payment.

5. If you have testified that you did purchase the title which the deeds above referred to purport to convey, please to declare whether, or not, you were a party to any suit or suits brought by the Essex Company, wherein the said company claimed by a title derived from one Stephen Barker the right to redeem the parcels of real estate mentioned in the deed of said Foster, from the mortgages purchased by

you; and whether, or not, you claimed to be the owner of the said equity of redemptions under the said deed from Foster; and whether, or not, any bargain was afterwards made between you and the said Essex Company relative to the termination of said controversy by the sale and purchase of your said title.

6. If yea, declare what said bargain was; when the same was made; and whether, or not, you sold any, and what right, title, interest, or claim to the said Essex Company.

7. If you answer the next preceding interrogatory affirmatively, please look at the deed now shown to you, purporting to be a deed from you to the said Essex Company, and declare whether the same is, or is not, your deed when the same was made and delivered; and what consideration you received therefor from the said Essex Company.

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

The plaintiff objects to so much of all the foregoing interrogatories as call for the contents of written documents or records.

S. BARTLETT,
By E. D. SOHIER.

And the Plaintiff proposes the following Cross-interrogatories to said Farley.

1. Are you a stockholder, or in any and what way interested in the stock of the Essex Company?

2. Please declare how much was paid to you by the Essex Company for all the title and assignments made or conveyed by you to the Essex Company by the conveyances above referred to; and how said payment was made, whether in cash, or otherwise.

S. BARTLETT,
By E. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE and al. } In Equity.

Interrogatories on the part of the Defendants to John T. Morse, of Boston.

1. Declare whether, or not, you are the clerk of the Essex Company, and whether, or not, you have charge of the books and transactions of said company in Boston. Explain the nature and extent of your employment for them, and how long you have been so employed.

2. State the officers of said company to whom authority is given by the charter, regulations, and by-laws thereof, to bind said company by

contracts for the payment of money by said company, or other contracts; and state who held such office or offices in the years 1845 and 1846. Produce the records of said company, and copy and annex to your answer the record of its organization and of the by-laws of said company, so far as relates to the powers and duties of the treasurer of said company, or of any agent or agents, if any there be, authorized to purchase land.

3. Declare what is the amount of the capital stock of said company, and how much thereof has been paid in? Where has the amount, if any paid in, been invested or expended, and for what purposes? Declare how much has been invested or expended, and the objects for which this has been done, in detail?

4. Declare whether, or not, you are acquainted with the property in said Lawrence described in schedule A, and formerly belonging to said Durant; and declare whether, or not, any and what payments have been made by the Essex Company of moneys to any and what persons for or on account of said property, or for or on account of any suits or controversies or questions concerning the same, or for the purposes of vesting a title thereto in said company, and for clearing or extinguishing any claims, liens or demands thereon?—if yea, fix the date of such payments, and the amount, and the persons to whom they were made, and what was the purpose or object of each payment.

5. Declare whether, or not, prior to any such payments or account of said property, said company had expended moneys for the purchase of land and water-power in Lawrence?—if yea, when, and of whom were such purchases made; what amount was paid, and what property purchased; and produce the last books of the Essex Company, and copy in the master's presence, and annex to your answer a true copy of the entry thereon, if any, relative to said purchases, and state who made said entry; and if you say you made it, declare whether, or not, the same was made in accordance with the facts of the case; and whether the statements therein contained are true, or how otherwise?

C. G. RIPLEY, for
W. H. GARDINER, *for Defts.*

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

DURANT
vs.
LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants to William Beals, of Boston, in said district.

1. What is your name, age, residence and occupation?

2. Do you know the parties to the above cause, any or either of them?

3. If you say you know said Durant, state how long you have known him, and whether, or no, you have had any and what business dealings or connections with him?

4. Declare whether, or not, in the year 1843, you were a creditor of said Durant?—if yea, what was the amount of his indebtedness to you, and at what time, and in what manner, did he become so indebted?

5. Declare whether, or no, you had any security for said debt, or any part of it?—and if yea, what security, and for what part of said debt?

6. If you say you held a mortgage upon property belonging to said Durant as such security, declare for what amount, and state particularly what the property was, and the date of said mortgage; and annex to your answer the said mortgage, and the note or other evidence of debt it was given to secure, or a true copy thereof, if in your possession; and if not in your possession, state where they are, if you know, or in whose possession did you last see them?

7. State, if you have not already stated it in your answer to the foregoing interrogatory, whether, or not, the Fourdrinier paper machine in the upper paper-mill of said Durant, at Methuen, was included in said mortgage; and examine the paper now shown to you by the master, whereof a copy is annexed, marked A, and state whether it is, or is not, signed by you; and examine the receipt endorsed thereon, and state whether the signature thereto is, or is not, the signature of said Durant?

8. Declare whether, or not, said paper was given to said Durant by you, or by your authority, and why; and whether, or not, if said machine was delivered to said Durant, as appears by his said receipt, you received the same from him; and if not, why not; and what became of the same after he had received it, if you know?

9. Declare whether, or not, said Durant is now indebted to you?—if yea, what is the amount of said indebtedness, and do you hold any security therefor; and if so, what is it? If he has paid, or been discharged from the debt due to you, at the date inquired of in the third interrogatory, or any part thereof, state when, by whom, and in what manner has the same been paid or discharged?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

The plaintiffs object to so much of each of the above interrogatories as calls for the statement of the contents of written instruments by the witness; also to the 8th interrogatory, as seeking to introduce impertinent matter; and propounds the following cross-interrogatory, viz:

1. Was the indebtedness of Durant to you evidenced by notes or written contract? If yea, produce the same, or state where they now are.

2. Did said Durant make you any payment of moneys after the 28th of March, 1843?—if yea, how much, and when; be particular and state the dates and sums of such payments; and examine your books.

S. BARTLETT,
By E. D. SOHIER.

(Copy.)

BOSTON, *Jan. 25th*, 1849.

MR. ADOLPHUS DURANT:

You are authorized and requested by me to take possession and charge of the Fourdrinier paper machine which has been used by you in the paper-mill at Methuen, and also all the copper rollers and appurtenances belonging to it; and to demand the same of any person who may have them, and hold the machine subject to my order.

(Signed) WILLIAM BEALS.

LAWRENCE, *March* 1, 1849.

Received of the Essex Company the Fourdrinier machine, rollers, and appurtenances within mentioned, in conformity with the authority given me therefor by William Beals.

(Signed) ADOLPHUS DURANT.

A true copy—attest:

ISAAC O. BARNES, *Clerk*.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants to Jacob Howe, of Haverhill, in said district.

1. What is your name, age, residence, and occupation?
2. Do you know the parties to the above cause, either or any of them?
3. If you say you know the said Durant, state how long you have known him; and whether, or not, you have known anything, and if so, since what time, and what have you known respecting the pecuniary condition and affairs of said Durant?
4. Declare whether, or not, and if so, at what time, said Durant applied to James H. Duncan, esquire, a master in chancery in the county of Essex, to be declared an insolvent debtor, and for the benefit of the insolvent laws; and whether, or not, upon said application said master issued a warrant against said Durant's goods and estate; and whether, or not, by appointment of said master, you executed said warrant as the messenger in the case; and whether, or not, and if so, when, were you appointed assignee of said Durant's estate in said case; and whether, or not, you accepted said appointment, and acted under it as such assignee?
5. Declare whether, or not, as such assignee, you sold at public auction any and what property, rights, title, or interest of said Durant

in and to any and what real estate in Methuen?—if yea, describe the estate so sold, and state the time and place of sale, and whether you advertised the same previous to such sale; and if yea, how long before, anywhere, and how; and if you have in your possession one of the said advertisements, written or printed, annex it to your answer.

6. State who acted as auctioneer at such sale; and what persons you can recollect to have been present?

7. If you say that you acted as auctioneer, and that Stephen Barker, of Methuen, near Lawrence, was present, declare whether, or not, the said Barker, before said sale began, or while it was in progress, or at any time during the same, forbid you to sell the said estate? Did the said Barker on said occasion make any, and, if any, what statement, touching said sale or said estates, to you, or to any other person that you saw or heard? State your recollection on this subject as definitely as you can, and give your reasons for believing that your recollection or impression is correct, if you have any?

8. Declare who bid for said property, and to whom it was struck off, and at what price, and how many bids were made, and by whom each was made? If you say that James Durant, brother of the plaintiff, was present and bid against Joseph Foster, and that the plaintiff was also present, state the position of said plaintiff relatively to you and to his brother? If you saw or heard said plaintiff do or say anything to his said brother while said bidding was going on, describe the actions of said plaintiff as particularly as you can, and give his precise words, if you heard him say anything.

9. If you shall have said that Joseph Foster, of Newton, was the highest bidder at said sale, and that said property was struck off to him, state at what price; and declare whether, or not, he signed any memorandum in writing of said sale? Examine the paper now shown to you by the master, marked A, and declare whether, or not, you recognise it as the memorandum so signed by said Foster?

10. Declare whether, or not, you executed and delivered a deed of said estate to said Foster?—if yea, when and what was the consideration paid therefor by said Foster? Examine the deed now shown to you, dated June 1, 1844, and purporting to be a deed from yourself to said Foster, and state whether, or not, you recognise the same to be such conveyance; and whether, or not, the same was executed and delivered by you in pursuance of said auction sale, or how otherwise?

11. Declare whether, or not, at any time between the said sale and the date of said deed, you had an interview with said Stephen Barker; and what, if anything, was said by Barker respecting said property, or a sale thereof, to be made by you to said Barker, or any other person beside said Foster?—if yea, state when it was, and all that was said by said Barker or yourself on that occasion.

12. Declare whether, or not, you received any letter or letters from said Durant while you were such assignee, touching any property of his in your possession, as assignee?—if yea, annex said letters, or a true copy thereof, to your answer; and if not in your possession, state what

has become of them, or in whose possession they are, or where they were last seen by you? If you say they are lost or destroyed, state the contents according to your best recollection?

[Plaintiff objects to this interrogatory.]

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

The plaintiff objects to so much of the foregoing interrogatories as calls for the statements of the contents or effect of records, or of matter, instruments, or documents, unless the proper preliminary proof be made, and propounds the following cross-interrogatory:

1. When you made the sale of the property inquired about by defendant, did you go into the mill upon the premises where the plaintiff and his brother were at work, and hold the sale there?

S. BARTLETT,
By E. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants to Josiah Dearborn, of Methuen, in said district.

1. What is your name, age, residence, and occupation, and do you hold any and what office in said Methuen?

2. If you say you are town clerk of Methuen, declare whether, or not, you have ascertained from the record of mortgages of personal property in Methuen, what, if any, personal property appears by said record to have been mortgaged by the complainant in 1843, prior to October, to any person or persons. or what mortgages were then outstanding upon said record from said Durant to any person or persons?—if yea, declare and specify each such mortgage, the names of the mortgagees, the date, the amount and nature of the debt secured thereby and the property embraced therein, and whether or not said debts were over-due; make a detached statement of the matters inquired of as to each mortgage.

W. H. GARDINER, *for Defendants*,
By C. G. RIPLEY.

Plaintiffs do not propound any cross-interrogatories.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on the part of the Defendants to E. H. Safford, of Haverhill, in said district.

1. What is your name, age, residence, and occupation?
2. Do you know the complainant in the above cause; and if yea, how long have you known him?
3. If you have said that you are editor, or publisher, or printer of a newspaper printed in Haverhill, state what is the name thereof, and whether, or no, you published, edited, or printed said paper in the month of September, 1843, and how often the same was then published, and what was the circulation of said newspaper at that time?
4. If you shall have stated in answer to the last interrogatory that you then published, or edited, or printed a newspaper in said Haverhill, and the name thereof, state whether, or not, during said month of September, you published in said paper any advertisement or advertisements in the words and figures contained in the printed paper annexed to the certified copy of a deed now shown to you by the master, and marked A? If yea, declare in how many successive or separate publications of the said paper the same was inserted or published, and whether, or not, said advertisement appeared in every copy of each such issue, or how otherwise; and annex to your answer a copy of each number of your said journal containing the same. Declare from whom you received said advertisement and the order to insert the same, and how many insertions were ordered; was said advertisement given to you orally or in writing, and, if in writing, annex the original writing to your answer, if in your possession; if not in your possession, state whose handwriting it was in, and when, and where, and in whose hands you last saw it?
5. Declare whether, or not, you made any and what charge for the same, or to whom and by whose order; and whether, or not, you have been paid therefor, and by whom, and how much?
6. Declare whether, or not, you printed said advertisement, or any other similar thereto, in any other form than as part of your said journal; and if yea, how many copies you printed, and for whom, and by whose order, and to whom you delivered the same.
7. How many copies of your said paper were regularly subscribed for, taken, or sold in Methuen at said time?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

Plaintiff does not propound any cross-interrogatories.
A true copy—attest: ISAAC O. BARNES, *Clerk.*
[REC. CXXV, D. T., 1855.]—29

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories on behalf of the Defendants, to Ephraim Brown, jr., of Salem, in said district.

1. What is your name, age, residence, and occupation?

2. If you say you are register of deeds for the county of Essex, declare whether you have, or have not, examined the records in your office, in order to ascertain what real estate appears thereby to have been owned in said county by said Durant, or wherein he had any right, title, or interest in the year 1843, prior to the thirty-first day of March, in said year, and what were the liens and incumbrances outstanding thereon at said date?

3. If you answer the foregoing interrogatory in the affirmative, please to state in detail the result of such examination, specifying each parcel of real estate, and each lien or incumbrance upon each, and the nature and amount thereof?

W. H. GARDINER, *for Defts.*
By C. G. RIPLEY.

Plaintiffs do not propose any cross-interrogatories.
A true copy—attest:

ISAAC O. BARNES, *Clerk.*

Answers of Robert Farley to the Interrogatories hereto annexed, on the part of the Defendants.

To the first interrogatory he says—My name is Robert Farley; I am fifty-one years old; I reside in Boston, and am a broker.

2. To the second interrogatory he says—I have looked at the said deed purporting to be a mortgage from Durant to Marland & al., and at the deed thereon endorsed, purporting to be assignments from the said Marland to me, and from me to the Essex Company. I recognise the deed as an original paper formerly in my possession. I was a purchaser of the said mortgage, in April, 1845. I paid fifteen hundred and ninety-five $\frac{42}{100}$ dollars therefor to Abraham Marland. This is the original deed and assignment from said Marland which I received in consideration of the said payment. I afterwards sold the same mortgage to the said Essex Company, and I recognise and identify as my signature and deed the deed purporting to be my assignment of the said mortgage to the said Essex Company. It was made and delivered on August 20th, 1846. The sum then due on said mortgage was seventeen hundred and twenty dollars, and that was the sum which I received.

3. To the third interrogatory he says—I have looked at the deed now shown me, purporting to be a deed from Samuel Hubbard & al. to me, and I recognise it as an original paper formerly in my possession.

I was a purchaser from the grantors therein named of the property, rights, and interests which said deed purports to convey; and in April, 1845, I paid forty-five hundred dollars to Samuel Hubbard for the grantors, and this is the original deed of assignment which I received from the grantors in consideration of the said payments.

4. To the fourth interrogatory he says—I have looked at the said deed, purporting to be a deed from Joseph Foster to me, and I recognise the same as an original deed formerly in my possession. I was a purchaser from said Foster of the property, rights, and interest which the said deed purports to convey, in April, 1845. I paid twenty-five hundred dollars therefor to Joseph Foster, and this is the original deed which I received from said Foster in consideration of the said payment.

5. To the fifth interrogatory he says—I was a party to a suit brought by the Essex Company, in which they claimed, by a title derived from Stephen Barker, the right to redeem the parcels of real estate mentioned in the deed of said Foster, from the mortgages purchased by me. I claimed to be the owner of the said equity of redemption under the said deeds from Foster, and from Hubbard and others, trustees, and a bargain was made between me and the said Essex Company, relative to the termination of said controversy by the sale and purchase of my said title.

6. To the sixth interrogatory he says—The bargain was made about August 18, 1846. They were to pay me about eighteen thousand dollars, and in consideration of that sum which was paid me, I conveyed to the Essex Company all my right, title, and interest in the premises conveyed to me by the several deeds herein before mentioned.

7. To the seventh interrogatory he says—I have looked at the said deed, purporting to be a deed from me to the said Essex Company, and the same is my deed. It was made and delivered, August 20, 1846. The said company paid me eighteen thousand dollars for the said deed and an assignment of Marland's mortgage.

Answers to the Cross-interrogatories.

1. To the first cross-interrogatory he says—I own fifty shares in the stock of the Essex Company.

2. To the second cross-interrogatory he says—The whole amount paid was eighteen thousand dollars, and the payment was made in cash.

ROBERT FARLEY.

Sworn to before me, January 20, 1852.

GEO. S. HILLARD.

Asnwers of John T. Morse to the Interrogatories hereto annexed, on the part of the Defendants.

1. To the first interrogatory he says—I am the clerk of the Essex Company, and have charge of the books and transactions of said company, in Boston. I keep the treasurer's accounts, make all the pur-

chases of supplies made for the company in Boston, and have been so employed since the origin of the company, about six years ago.

2. To the second interrogatory he says—Authority is given by the charter, regulations, and by-laws of said company to the treasurer, to bind said company by contracts for the payment of money by said company, and other contracts. If he sells land, the by-laws require that two directors shall approve his deed. Charles S. Storrow was the treasurer of the said company in 1845 and 1846. I herewith produce the records of the said corporation, and copy and annex to my answer the record of its organization and the by-laws of said company, so far as relates to the powers and duties of the treasurer, who is authorized to purchase land.

The paper is hereto annexed, marked A.

3. To the third interrogatory he says—The capital stock of said company is one million and a half of dollars. There have been paid in one million four hundred and ninety-eight thousand and five hundred dollars. The amount paid in has been invested in the purchase of the site of the town of Lawrence, and in the erection of the dam and canal, the machine shop, foundery, boarding-houses, and so forth, connected with the company, and in the purchase of reservoirs of water in New Hampshire. It is not in my power to set forth the details, except so far as they are contained in the balance-sheet hereto annexed, marked C.

4. To the fourth interrogatory he says—I know by title and description the property in said Lawrence, described in schedule A, and formerly belonging to said Durant. On May 12, 1845, so far as I know, there were paid to Stephen Barker one hundred and twenty-five dollars. On May 22, 1845, four thousand two hundred and twelve dollars and sixty-seven cents were paid for the Mercantile Bank mortgage. On August 20, 1846, eighteen thousand and thirty-six dollars were paid to Robert Farley for title to A. Durant's estates in Methuen. On January 6, 1847, four hundred and forty-seven dollars and ten cents to B. R. Curtis, for fees and expenses. On August 31, 1850, four hundred and fifteen dollars to B. R. Curtis, for the same, and five hundred dollars to E. S. Rand, for his services. All these payments were on account of the Durant property, either to vest a title thereto in said company, or for extinguishing liens, claims, or demands, and for professional services in and about the said property.

5. To the fifth interrogatory he says—Prior to such payments on account of such property, the said company had expended various sums at various times, for the purchase of land and water-power in Lawrence, amounting in all to one hundred and twenty-three thousand eight hundred and forty-four $\frac{63}{100}$ dollars. The paper hereto annexed, marked B, contains a statement of the amount of such payments, of the times when, the persons to whom, and the property for which they were made. This paper is copied by me from the cash book of said company, and the original is the first entry on the credit side? The original entry is in my handwriting. The said cash book is herewith

produced by me, and the accuracy of the copy is verified by the commissioner's comparison of it with the original. The entries were made in accordance with the facts of the case, and the statements therein contained are true. JOHN T. MORSE.

Sworn to before me, January 28, 1852.
GEO. S. HILLARD, *Commissioner.*

[Paper marked A, annexed to the deposition of John T. Morse, and forming part thereof.
G. S. HILLARD, *Commissioner.*]

Corporation Meeting.

BOSTON, *April* 16, 1845.

Pursuant to a notice in the Salem Gazette of the 8th instant, a meeting of the subscribers to the stock in the Essex Company was held at ten o'clock this day at the counting-room of John A. Lowell, esq., in Oliver street.

The meeting was called to order by Samuel Lawrence, esq., and Hon. Nathan Appleton chosen chairman, and Joseph W. Patterson secretary.

The charter (herein before recorded) was read by the chairman, and, on motion of Hon. Abbott Lawrence, was unanimously accepted.

The notice of the meeting was read by the chairman, from the Salem Gazette of the 8th instant.

Messrs. John A. Lowell, Charles S. Storrow, and William W. Stone, were appointed a committee to prepare by-laws for the corporation.

The committee subsequently reported the by-laws, (herein before recorded,) and they were unanimously adopted by the meeting.

On motion of John A. Lowell, esq., *Voted* unanimously, that the capital stock of this company be fixed at one million of dollars, divided into ten thousand shares.

The meeting proceeded to the choice of officers. The result of the ballot was as follows, viz: For clerk, the whole number of votes was twenty, all of which were for John P. Bigelow. For treasurer, the whole number of votes was seventeen, all of which were for Charles S. Storrow. For directors, the whole number of votes was twenty, all of which were for Abbott Lawrence, P. T. Jackson, William Sturgis, Nathan Appleton, John A. Lowell, Ignatius Sargent. On motion of William Lawrence, esq., the meeting was dissolved.

JOSEPH W. PATTERSON, *Secretary.*

A true copy of the record—attest:

JOHN T. MORSE,
Clerk of the Essex Company.

Extract from the By-Laws.

No. 2. There shall be a treasurer, who shall receive and pay all moneys, collect all debts and assessments, and have the general care of the pecuniary concerns of the corporation. The treasurer shall also be the general agent of the corporation to make purchases and sales of

stock, to superintend and regulate the concerns of the corporation, and make contracts relating thereto. He may contract debts in the name of the corporation when duly authorized thereto by the directors. He shall keep his accounts in a clear and perspicuous manner, and shall, at all times, when requested by the directors, exhibit true statements of the affairs of the corporation. He shall give bonds for the faithful performance of his duty, in such sums and with such sureties as may be required by the directors.

No. 3. The directors shall have all the power which the corporation has, to purchase and sell real estate and mill powers for the corporation, for term of years or in fee, on such terms as they may deem advantageous to the corporation; and they may direct and authorize the treasurer in all cases, when the mode of conveyance is not designated by the corporation, to sign and affix the seal of the corporation to such leases or deeds as may be necessary to convey such real estate or mill powers as they may have sold or leased—the consent of the directors to be affixed to every such deed or lease, and signed by a majority of them.

This last clause, viz: "the consent of the directors to be affixed to every such deed or lease, and signed by a majority of them," was stricken out of the by-law by vote of the stockholders, at the annual meeting, May 5th, 1846, and the following clause substituted: "And the signatures of any two directors approving such deed or lease, shall be evidence of such direction and authority."

Attest: JOHN T. MORSE,
Clerk of the Essex Co.

[Paper marked C, annexed to the deposition of John T. Morse, and forming part thereof. G. S. HILLARD, *Commissioner.*]

Balances Essex Company, April 1, 1851.

Dr.		Cr.	
Buildings	$105,748 77	Capital stock	$1,250,000 00
Reservoirs	134,109 03	Land	125,283 34
Water-power	525,773 76	New stock instalment, No. 1	120,100 00
Mill leases	120,000 00	New stock instalment, No. 2	97,750 00
Andover Bridge	19,454 57	Mill-power	224,064 00
Land notes	189,649 33	Mill-power on lease	120,000 00
James Bill, agent	103 89	Atlantic Cotton-mills	160,588 00
Bills receivable	215,222 92	Bills payable	389,785 43
Upper mill site	18,753 03		
Lawrence Gas Co. shares	16,400 00		
Machine-shop and appurtenances	566,730 48		
Cash	10,506 78		
Charles S. Storrow, agent	575,118 21		
	$2,487,570 77		$2,487,570 77

232

[Paper marked B, annexed to the deposition of J. T. Morse, and forming part thereof. G. S. HILLARD, *Commissioner*.]

Extract from Cash Book of Treasurer of Essex Company.

May 12, 1845. By land,

		Paid A. & A. Lawrence & Co. for sundry advances made by them on purchases, viz: for their deposit in Suffolk Bank to Cr. Andover Bank,		
1845,	Mar. 25,	as per account on file - - -		$25,000 00
	" 26	per Samuel Lawrence, dft. paid by them - - - -		25,000 00
	" 28	ditto	ditto ditto	25,000 00
	" 29	ditto	ditto ditto	4,600 00
	Apr. 9	ditto	ditto ditto	36,368 56
	" 23	ditto	ditto ditto	6,289 83
				$122,258 39
		Interest on same to this date - - -		836 24
				$123,094 63

This sum having been paid by A. & A. Lawrence & Co., in the following manner:

For Griffin's Island, 2 acres at Peters' Falls -	$400 00
Paid Samuel Griffin for 86 acres - - -	1,500 00
" D. Saunders for 6 acres - - - -	300 00
" Joseph Shattuck for one-half acre - -	350 00
" N. Shattuck for 25 acres - - - -	375 00
" Joseph Chandler for 86 acres - - -	2,100 00
" N. Bailey for 7 acres - - - -	353 44
" D. Stephens and others for 1 acre - -	40 00
" Abel Walker for 20 acres - - - -	450 00
" Phebe V. Brown for 14 acres - - -	280 00
" Elbridge Griffin - - - - -	600 00
" Enoch Bradley - - - - - -	200 00
" Dean Chickering - - - - -	1,505 06
" Isaac Wilson - - - - - -	1,334 58
" T. Bailey 2d - - - - - -	245 00
" H. Poor - - - - - - -	2,020 00
" Simeon Stevens - - - - -	1,716 44
" Theo. Poor - - - - - -	9,206 87
" " - - - - - -	99 00
" Stephen Barker - - - - -	125 00
" Moses Town - - - - - -	48 95
" Daniel Merrill - - - - - -	6,740 00

Paid Joshua Thwing		$3,495 00
" Frye Austin		1,020 00
" William Johnson		27 00
" Elizabeth Jennings		2,995 00
" Caleb Richardson		4,745 00
" Alphs. Bodwell		2,745 00
" Nathaniel Stevens		45 00
" Nathan Parker		1,575 00
" Jesse Sargent		950 00
" Daniel A. White		298 00
" Phineas M. Gage,		2,995 00
" Charles P. Bailey,		1,856 25
" Sally Daniels,		2,261 44
" Stephen and Lucy Towne,		150 00
" Jesse Sargent,		1,226 75
" Nathaniel Dowdina,		148 00
" Joseph Kittredge,		2,842 00

The above are all embraced in two deeds of Daniel Saunders to E. S. Rand and C. S. Storrow, in trust, dated April 4th, 1845.

Paid Mary W. Stevens,	795 00
" Moody Bridges,	1,195 00
" Thomas C. Foster,	550 00
" Amos Adams,	495 00
" Nicholas Noyes,	370 00
" Daniel A. White,	4,600 00
" Stephen Barker,	695 00
" Daniel K. Peters,	2,000 00
" Town of Methuen,	6,297 81
" Phineas Stevens and Dyke,	995 00

The above are embraced in deed of Samuel Lawrence, J. Nesmith, and D. Saunders, to E. S. Rand and C. S. Storrow, in trust, dated 4th April, 1845.

Paid as earnest-money on taking deeds and bonds of above, and other lands not taken, paid at sundry times for taking care of above property, recording deeds, &c.,	$595 88	
Less received for produce, &c. sold,	310 85	
		285 03
Paid Daniel Saunders for services to Aug. 20, '44,		600 00
" Phillips Academy 1 year interest on mortgage, to J. Griffin,		60 00
" David Richardson for mill privilege in Dracut,		345 63
" Dana and Samuel Richardson for 10 acres and mill privilege in Dracut,		600 00
" D. Saunders for services to date,		1,000 00

Paid Profit on above purchases as per agreement with Abbott Lawrence and J. A. Lowell,	$30,000 00
" S. Lawrence's draft, - - - - -	6,289 83
" Interest at different times for above purchases by S. Lawrence and J. Nesmith, - -	506 26
" A. & A. Lawrence & Co., for interest on the above drafts and deposits from their several dates to 12th may, as per account on file,	836 24
	$123,094 63
Land paid E. S. Rand on account examining titles,	750 00
	$123,844 63

Answers of William Beals to the Interrogatories hereto annexed, on the part of the Defendants.

1. To the first interrogatory he says—My name is William Beals; I am sixty-six years old; I reside in Boston, and am a publisher.

2. To the second interrogatory he says—I know Mr. Durant and Mr. Lawrence.

3 To the third interrogatory he says—I have known Mr. Durant over thirty years. I have had a considerable amount of business transactions with him. I have bought paper of him for the firm of Beals and Greene, and have lent him money on security.

4. To the fourth interrogatory he says—In the year 1843 I was a creditor of the said Durant. On the first day of January, 1844, the balance of account due to me from the said Durant was one thousand four hundred and forty-six $\frac{8}{100}$ dollars. He became so indebted by virtue of his notes previously given, of the dates and amounts as follows:—1842, May 21, one hundred dollars; Oct. 11, seven hundred dollars; Dec. 28, five hundred and fifteen dollars; 1843, Feb. 21, three hundred and forty-one dollars and fifty-six cents. The whole amount of the notes and interest was not due, as he had made me partial payments.

5. To the fifth interrogatory he says—I held a mortgage of a paper-mill and stock in Methuen, as security for the whole of the said debt.

6. To the sixth interrogatory he says—The amount of the said mortgage, the property it conveyed, and the date thereof, will appear from the paper writing hereto annexed, marked A, which is a true copy of the original mortgage now in my possession, and herewith produced to the commissioner. The paper hereto annexed, marked B, is a true copy of the original contract between me and the said Durant, for which I held the said mortgage as security, which said original contract is in my possession and herewith produced to the commissioner.

7. To the seventh interrogatory he says—The said Fourdrinier paper machine was included in the said mortgage. The paper now shown to me by the commissioner, of which a copy is annexed to my interroga-

tories, marked A, was signed by me, and the signature to the receipt endorsed thereon is the signature of the said Durant.

8. To the eighth interrogatory he says—The said paper was given to the said Durant by me. The said machine was going to destruction where it was, as I was informed, and I was willing, under the circumstances, that Durant should take possession of it and dispose of it on my account. I never received the said machine from him; I presume he disposed of it, but do not know of it of my own knowledge.

9. To the ninth interrogatory he says—The said Durant is now indebted to me in the sum of three hundred and thirty-seven $\frac{85}{100}$ dollars, for which I hold no security. Since January 1, 1844, a portion of the amount then due to me by the said Durant has been paid at the times, by the persons, and in the manner following:

1844, April 9.	By cash received of Emerson & Co., sales of paper, - - - - -	$51 30
" May 25.	By cash received of Stone & Norton,	547 13
1845, Jan. 1.	By White, Lock & Potter's note, at 6 months, - - - - -	100 00
1845, Jan. 1.	By White, Lock & Potter's note, at 5 months, - - - - -	122 00
" April 15.	By cash received of Stone & Norton, sales of paper, - - - - -	67 22
" Oct. 9.	By cash received of Stone & Norton, sales of paper, - - - - -	35 36
1846, Jan.	By account of machinery sold Jos. Norton, jr., delivered Albert Norton, -	510 00

Answers to the Cross-interrogatories.

1. To the first cross-interrogatory he says—The indebtedness of the said Durant to me was evidenced by four notes, signed by him and made payable to me or order, of which the dates, amounts, and times of payment were as follows: 1842, May 21, one hundred dollars on demand; Oct. 11, seven hundred dollars, three months; Dec. 28, five hundred and fifteen dollars, four months; 1843, Feb. 21, three hundred and forty-one dollars and fifty-six cents, on demand. The notes are now in my possession, and are herewith exhibited to the commissioner.

2. To the second cross-interrogatory he says—After the twenty-third day of March, 1843, the said Durant did make me sundry payments of money, as follows:

1843, May 17.	By cash received of Case & Holden -	$11 00
" " 23.	By cash received of Houghton, note, -	45 00
" July 22.	By cash received of Beals & Greene for 78 reams of newspaper, of Emerson, -	246 33

The subsequent payments are particularly set forth in my answer to the ninth direct interrogatory. I have examined the book which contains a memorandum of my transactions with the said Durant.

WM. BEALS.

Sworn to before me, February 7, 1852.

GEO. S. HILLARD, *Commissioner.*

[Paper marked A, annexed to the deposition of William Beals, and forming part thereof.

GEO. S. HILLARD, *Commissioner.*]

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, gentleman, in consideration of three thousand dollars to me paid by William Beals, of Boston, in the county of Suffolk, the receipt whereof is hereby acknowledged, do hereby sell and convey to the said William Beals the following described personal property, viz.: twenty-five tons of printing stock, three cutters for stock, two cleaners, two paper-cutters, four engines, one Fourdrinier machine, one dyer, one boiler, and all the machinery and tools in and about the paper-mill occupied by me in said Methuen; also two team-wagons, four team-horses, two sets double harness:

To have and to hold the same to the said William, his executors, administrators, and assigns: provided, nevertheless, that if the said Adolphus Durant, his executors, administrators, or assigns, shall pay to the said Beals, his executors, administrators, or assigns, all such debts and sums of money as may now be due and owing from said Durant to said Beals, by note, book account, or otherwise, on demand, with interest; and all such sums as may be hereafter advanced by said Beals to said Durant, or as may be hereafter on any account owing by said Durant to said Beals, on demand, or at such times as may be agreed between them; and shall save harmless and keep indemnified the said Beals from any and all loss, expense, or damage, by reason or on account of any liability that said Beals may contract with or for said Durant, all within three years from the date hereof, then this deed, and any and all notes given by the said Durant to the said Beals for any of said considerations shall be void, otherwise shall remain in full force.

In testimony whereof, I, the said Adolphus Durant, have hereunto set my hand and seal, this twenty-fifth day of June, in the year eighteen hundred and fifty-one.

(Signed) ADOLPHUS DURANT. [SEAL.]

In presence of—R. FRYE.

[Paper marked B, annexed to the deposition of William Beals, and forming part thereof.

G. S. HILLARD, *Commissioner.*]

It is agreed by and between William Beals, of Boston, and Adolphus Durant, of Methuen, that from and after the date hereof, the said Beals will procure foreign paper stock, or such other as shall be deemed for their mutual advantage, for said Durant to manufacture into paper in his mill, in said Methuen, and until this arrangement shall be terminated by either party giving to the other reasonable notice; said Beals to charge said Durant a suitable commission on said stock, to be agreed upon from time to time, the same to be as upon a credit of six months, and to be computed from the end of each month upon the amount that has been procured as aforesaid during that month.

The said stock remains the property of said Beals in all the various stages of its manufacture, and in the paper, until paid for by said Durant, or sold and delivered to some other purchaser.

(Signed) ADOLPHUS DURANT.

Boston, July 1, 1841.

Answers of Josiah Dearborn to the Interrogatories hereto annexed, on the part of the Defendants.

1. To the first interrogatory he says—My name is Josiah Dearborn; I am forty-five years old; I reside in Methuen; I am a shoe manufacturer; I am town-clerk and treasurer of Methuen.

2. To the second interrogatory he says—I find upon the records of the said Methuen a mortgage of the said Durant to Moses Grant and Otis Daniel, of the date of February 26, 1834. The amount was four thousand dollars. The articles mortgaged were two cylinder paper-machines, complete; one steam drier, complete; one thousand mill poles, two horses, four wagons, chaise and harness, and household furniture.

There is also a mortgage from the said Durant to John Tenney, dated April 23, 1835, for four hundred dollars. The articles mortgaged were seven beds and bedding, seven bedsteads, one time-piece, two looking-glasses, one bureau, twelve chairs, seventeen window-blinds, two tables, lot of ironware, lot of crockery-ware, "being all now in the house;" one-horse cart.

There is also a mortgage from the said Durant to Seth Dewing, dated November 26, 1836, for six hundred dollars. The articles mortgaged are one bay mare, one chaise and harness, one iron kettle (seventy gallon potash), five beds, bedsteads, and bedding, two looking-glasses, two dozen chairs, one bureau, one thousand hanging pools.

There is also a mortgage from the said Durant to the said Seth Dewing, without date, for thirty-five hundred dollars. The articles mortgaged were one machine and driers for making paper, called a Fourdrinier machine, "in the paper-mill occupied by me."

There is also a mortgage from the said Durant to Jesse Sargent, dated October 21, 1837, for three thousand dollars. The articles mortgaged were one Fourdrinier machine, one drier, one boiler, and all the appurtenances and fixtures.

The above mortgage-deed was settled August 3, 1841.

There is also a mortgage from the said Durant to M. Carleton & Co., dated January 23, 1838, for one thousand dollars. The articles mortgaged were three tons of good, clean, well-sorted domestic rags, worth eight cents a pound; about three tons of fine linen rags, "being all there is in my mill."

There is also a mortgage from the said Durant to Moses Carleton, dated September 23, 1839, for three thousand dollars. The articles mortgaged were two grey horses, one black mare, one team-wagon, two sets of team harnesses, one wagon harness, one chaise and harness, about three tons of domestic and mixed rags, three hundred reams of wrapping-paper, three good rag-cutters, one rag-duster, two new engines,

and two second-hand, partly worn, now in use; and forty cords of pine and oak wood, and ten tons of hard coal.

The above was quit-claimed by Moses Carleton to Nathaniel F. Cunningham, November 25, 1839.

There is also a mortgage from the said Durant to William Swan, dated April 3, 1840, for one hundred and fifty dollars. The articles mortgaged were one new horse-cart, one new sleigh and light horse-wagon, with harness, and cart-harness.

There is also a mortgage from the said Durant to Joel Prince, agent for N. Cunningham, dated June 13, 1840, for three thousand dollars. The articles mortgaged were two gray horses, one bay mare, one team wagon, two sets of team-harnesses, one wagon-harness, one chaise and harness; about three tons of domestic and mixed rags, three hundred reams of wrapping-paper, three good rag-cutters, one rag-duster, four engines, now running in the mill; thirty cords of pine and oak wood, and two tons of hard coal.

There is also a mortgage from the said Durant to George Cutler, dated August 10, 1840, for two hundred and twenty-five dollars. The articles mortgaged were one bureau, one French stud horse, bought of Freedun Whitaker; one buggy with two seats and pole, one bay horse called Peters, and about eighty cords of peat.

There is also a mortgage from the said Durant to N. F. Cunningham, dated October 1, 1840, for three thousand dollars. The articles mortgaged were two gray horses, one bay mare, one team-wagon, two sets of team-harnesses, one wagon-harness, one chaise and harness, about three tons of domestic and mixed rags, three hundred reams of wrapping-paper, three good rag-cutters, one rag-duster, four engines now running in the mill, forty cords of pine and ash wood, and ten tons of hard coal, one cotton willow.

There is also a mortgage from the said Durant to Abram Marland, dated November 4, 1840, for sixteen hundred dollars. The articles mortgaged were one cylinder paper-machine, with mould and drier, one paper-trimmer and rag-cutter.

There is also a mortgage from the said Durant to John Tenney, dated March 27, 1841, for two hundred dollars. The articles mortgaged were one new horse-cart, one new sleigh, one light horse-wagon, with harness, one cart-harness, one chaise, bought of R. W. Nesmith; one-horse wagon, bought of George W. Butters.

There is also a mortgage from the said Durant to William Beals, dated June 25, 1841, for three thousand dollars. The articles mortgaged were twenty-five tons of printing stock, three cutters for stock, two cleavers, two paper-cutters, four engines, one Fourdrinier machine, one drier, one boiler, and all the machinery and tools in and about the paper-mill occupied by me in said Methuen; also, two team-wagons, four team-horses, two double sets of harnesses.

There is also a mortgage from the said Durant to John Tenney, dated June 23, 1841, for two hundred dollars. The mortgage conveys one iron-gray mare called Fanny.

There is also a mortgage from the said Durant to Jesse Sargent, dated Sept. 24, 1841, for six hundred dollars. The articles mortgaged were one pair of French horses, called the cattle; one hundred and fifty cords of peat, fifty cords of wood, one buggy, worth fifty dollars.

There is also a mortgage from the said Durant to John Tenney, dated February 7, 1842, for fifteen hundred dollars. The articles mortgaged were one buggy, about forty cords of peat, about twenty cords of wood, two French horses, called the cattle; one French horse, called Peter; one rope-cutter.

There is also a mortgage from the said Durant to John Tenney, dated August 17, 1842, for one thousand dollars. The articles mortgaged were about one hundred cords of peat, "being all I have;" lot of white rags in my stockhouse, in Methuen; one white horse, one chaise, about twelve tons of oat fodder in my barns, about five tons of hay, about three acres of corn standing and growing, about two acres of potatoes standing and growing, about one acre of beets and carrots growing.

There is also a mortgage from the said Durant to John Tenney and James Durant, dated April 29, 1843, mortgaging about seventy tons of paper stock. The amount is fifteen hundred dollars.

There is also a mortgage from the said Durant to David Messer, dated December 19, 1843, for one hundred dollars, mortgaging one white mare called Clara.

There is also on record a notice of foreclosure, signed by Joseph Foster, for Seth Dewing, dated May 13, 1844, of the mortgage to Seth Dewing hereinbefore mentioned, without date.

There is also on record a mortgage from the said Durant of one carryall and harness, for one hundred and twenty-five dollars, dated December 19, 1844, to George Cutter.

There is a notice of assignment dated April 30, 1845, from Seth Dewing to Robert Farley, of his interest in the said mortgage, without date, hereinbefore mentioned.

I am not able to answer that part of the question which asks whether, or not, the debts of the said Durant secured by the said mortgages were over due. In general, the mortgages do not show this.

JOSIAH DEARBORN.

Sworn to before me, February 19, 1852.

GEO. S. HILLARD, *Commissioner.*

Answers of Jacob How to the Interrogatories hereto annexed, on the part of the Defendants.

1. To the first interrogatory he says—My name is Jacob How. I am fifty-six years old. I reside in Haverhill, and my present occupation is that of deputy sheriff.

2. To the second interrogatoty he says—I am acquainted with Mr. Durant, but not with Mr. Lawrence.

3. To the third interrogatory he says—I have known Mr. Durant about twenty-five years. I knew nothing definite of his pecuniary affairs till the month of October, 1843, when he applied for the benefit of the insolvent laws of Massachusetts. He returned a very small amount of property. Of late years, I have known nothing of his pecuniary condition.

4. To the fourth interrogatory he says—On or about the twentieth day of October, 1843, the said Durant applied to James N. Duncan, esq., a master in chancery, in the county of Essex, to be declared an insolvent debtor, and for the benefit of the insolvent law; and upon the said application, the said master issued a warrant against said Durant's goods and estate; and by appointment of the said master I executed the said warrant, as the messenger in the case; and I was appointed assignee of the said Durant's estate in said case, and I accepted the appointment and acted under it as such assignee.

5. To the fifth interrogatory he says—As such assignee, I did sell at public auction the right, title, and interest of the said Durant in and to certain real estate in Methuen. The said estate consisted of two paper-mills and two water privileges, together with two dwelling-houses and other buildings, and about twenty acres of land, upon the Spicket river in Methuen. It was sold on May 31st, 1844, and on the premises. I advertised the sale by printed handbills issued on or about May 14th, and distributed in Methuen and the neighboring towns. I also advertised the sale in the Haverhill Gazette, about two weeks before the sale. I have in my possession one of the said printed advertisements, which I herewith annex.

The paper is hereto annexed, marked A.

6. To the sixth interrogatory he says—I acted as auctioneer at the said sale. Among the persons present were Joseph Foster, N. W. Hazen, I think Abiel Stevens, Stephen Barker, Adolphus Durant, and a young man said to have been the brother of the said Durant, and John Tenney.

7. To the seventh interrogatory he says—I have no recollection that the said Barker at any time during the said sale forbade me to sell the said estate, or that he made any statement touching the said sale to me, or to any other person in my sight or hearing. I feel confident of my recollection upon this point, because Mr. Durant, before the sale, had told me that Mr. Barker had some claim upon the estate, and I expected that Mr. Barker would have said something about it, and from his not doing so, it made an impression on my mind.

8. To the eighth interrogatory he says—The bidders for the property were Joseph Foster and Mr. Durant's brother. It was struck off to Mr. Foster at six hundred dollars. There were many bids made, but I cannot say how many; all by those two persons, to the best of my recollection. During the sale the plaintiff and his brother several times stepped aside and had a consultation together, and afterwards the brother would make a bid. I have no recollection of having heard what they said. They stood near together, and when they had these consultations they were about fifteen or twenty feet from me.

9. To the ninth interrogatory he says—The property was struck off to Mr. Foster at six hundred dollars. He signed a memorandum in writing of the said sale. I recognised the paper marked A, shown to me by the commissioner, as the memorandum so signed by the said Foster.

10. To the tenth interrogatory he says—I did execute and deliver to the said Foster a deed of the said estate, April 5, 1845. He paid me six hundred and thirty dollars, principal and interest. The deed now shown to me, dated June 1, 1844, is a copy of my deed to said Foster, executed and delivered by me in pursuance of said auction sale.

11. To the eleventh interrogatory he says—I have no recollection of ever having had any conversation with Mr. Barker upon the subject inquired of in this interrogatory.

12. To the twelfth interrogatory he says—I received one letter from the said Durant while I was his assignee, touching a piece of property included in his schedule. The letter is in my possession, and I annex hereto a true copy.

The paper is hereto annexed, marked B.

Answer to the Cross-interrogatory.

1. To the cross-interrogatory he says—The sale was held in one of the mills upon the premises, but whether the plaintiff and his brother were at work there, I do not know.

JACOB HOW.

Sworn to before me, February 28, 1852.

GEO. S. HILLARD, *Commissioner.*

[Paper marked A, annexed to the deposition of Jacob How, and forming part thereof.

GEORGE S. HILLARD,
Commissioner.]

Auction—Assignee's sale.

Will be sold at public auction, on the premises in Methuen, in the county of Essex, on Friday, the 31st day of May, current, at ten o'clock in the forenoon, all the estate and interest that Adolphus Durant, an insolvent debtor, had, on the 20th day of October last, in and to the following described real estate, to wit: Two paper-mills and two water privileges, together with two dwelling-houses and other buildings, and about twenty acres of land, situate upon the Spicket river, in said Methuen, and now or lately occupied by said Durant.

The said premises are very convenient for the manufacture of paper, and are favorably located for the business; they are subject to sundry mortgages, the amount and particulars of which, together with the terms of sale, will be stated at the above time and place.

Farther particulars may be learned by inquiring of Joseph Foster, Newton, Lower Falls, Abiel Stevens, of Methuen, or of the subscriber.

JACOB HOW, *Assignee.*

Haverhill, May 14, 1844.

[Paper marked B, annexed to the deposition of Jacob How, and forming part thereof. G. S. HILLARD, *Com'r.*]

METHUEN, *March 26th*, 1844.

MR. HOW:

SIR: You ask for the deeds of the real estate belonging to my wife; they are not mine to give you; but I can give you a description of it, enough, I presume, for your purpose.

The meadow contains about fourteen acres, more or less, bounded as follows: On Parker Morse, west and north; Jonathan Merrill on the east, and the heirs of Richardson estate on the south, lying in Methuen. The other tract of land lies near me, containing 26 acres, bounded south by Spicket river; west by John Tarbox; north by Benjamin Hall; east by the county road, with two houses on the same, that families stay in—subject to a mortgage on the same of $800, with interest due on the same seventeen month, making $868. I leased the whole of this property to George Cutter, of Boston, lease dated Methuen, April, 1841, for fifteen years.

Yours, respectfully, A. DURANT.

The above is a true copy of a letter now in my possession.

Feby., 1852. JACOB HOW.

Answers of E. H. Safford to the Interrogatories hereto annexed, on the part of the Defendants.

1. To the first interrogatory he says—My name is E. H. Safford. I am forty years old. I reside in Haverhill, and am a printer.

2. To the second interrogatory he says—I know the complainant, and have known him for fifteen years.

3. To the third interrogtory he says—I am the editor, publisher, and printer of a newspaper printed in Haverhill, called the Essex Banner. I was the editor, publisher, and printer of the same paper in September, 1843. It was then published once a week. To the best of my recollection, the circulation of the paper at that time was between seven and eight hundred.

4. To the fourth interrogatory he says—In the month of September, 1843, I published in said paper an advertisement in the words and figures contained in the printed paper annexed to the certified copy of a deed now shown to me by the master, and marked A. The said was published in two successive issues of the said paper, and appeared in every copy thereof. It is not in my power to annex hereto a copy of each number of the said journal. I received the said advertisement and the order to insert the same from Adolphus Durant. I do not distinctly remember how many insertions were ordered, but I have no doubt that I was directed to put it into each paper that appeared before the day of sale. The said advertisement was given to me in writing. I have not the original advertisement in my possession, and do not know in whose handwriting it was. The last time I saw it was in my own hands, I think, at my office, some months after the pub-

lication. I presume it was burnt up as a paper of no value. After keeping such things a certain time we usually burn them.

5. To the fifth interrogatory he says—The charge for the same was eighty cents, which included the striking off of a few extra slips. The charge was made to Mr. Durant by his direction, and I presume he paid me, as it credited to him on the books.

6. To the sixth interrogatory he says—I printed a few extra slips, similar to that which has been shown to me. I cannot say how many exactly, but not more than a dozen. They were printed at Mr. Durant's order, for him, and were delivered to him.

7. To the seventh interrogatory he says—There were five or six copies of the said paper taken and subscribed for in Methuen at said time. E. H. SAFFORD.

Sworn to before me, March 29, 1852.

G. S. HILLARD, *Commissioner.*

Answers of Ephraim Brown to the Interrogatories hereto annexed, on the part of the Defendants.

1. To the first interrogatory he says—My name is Ephraim Brown; I am thirty-two years old; I reside in Salem, and am register of deeds for the county of Essex.

2. To the second interrogatory he says—I answer this question in the affirmative.

3. To the third interrogatory he says—The paper herewith produced, marked A, which I desire to have annexed to my answer, and to be taken as part of the same, contains the result of such examination, specifying each parcel of real estate owned by said Durant in said county, at the time inquired of, or in which he had any interest, and also the liens and incumbrances upon each, and the nature and amount thereof. EPHM. BROWN.

Sworn to before me, February 27, 1852.

GEO. S. HILLARD, *Commissioner.*

A.

Adolphus Durant, Grantor and Grantee, 1824 *to* 1844.

Book 239, leaf 205. Adolphus Durant from Joseph Bodwell, a warranty deed for fifteen hundred dollars, dated 1st August, 1825, of a piece of land in Methuen, containing about eight acres, situate on the road leading by Joseph Bodwell's house to Haverhill; thence easterly in a straight line (ranging by two white oak trees marked) to Spicket river at a stake and stones by the river; then across the river to the easterly side; thence northerly and westerly course up by said river, including the same to the bridge; thence southerly by the road to the bound first mentioned, with the buildings thereon; also a piece of land on the east side of the river opposite to the dam, extending six rods above and six rods below the same, and four rods wide; also a privelege of two rods to dig gravel; also a privilege in the stream, and of keeping dam at present height, and to raise it nine inches higher by paying widow White five dollars per annum.

Book 239, leaf 205. Adolphus Durant to Joseph Bodwell, mortgage of the above dated 1st August, 1825. Discharged 18th October, 1826.

Book 240, leaf 22. A quit-claim deed. Adolphus Durant from Joseph Bodwell, for twenty-five dollars, dated 6th December, 1825, of a right to flow the land which I, said Bodell, have sold and reserved *wright* to myself to flow, and a privilege of flowing my land which is above the mill-dam on Spicket river.

Book 240, leaf 22. Adolphus Durant from Isaac Bodwell, a warranty deed for one hundred and eighty dollars, dated 27th October, 1825, of a piece of land in Methuen, bounded, beginning at Spicket river bridge; thence westerly by said river thirty-seven rods and a half, &c., containing four acres.

Book 240, leaf 121. Adolphus Durant from Isaac Bodwell, a warranty deed for eighty-six dollars and twenty-five cents; dated 2d March, 1826, of a lot of land in Methuen, containing one acre and seventy rods, more or less, bounded, beginning at Spiggot river by a stake and stones, by land which I lately sold to said Durant, &c.

Book 243, leaf 135. Adolphus Durant to Massachusetts Hospital Life Insurance Company, a mortgage for fifteen hundred dollars, dated 16th October, 1826, (discharged 20th October, 1830,) of a lot of land containing about eight acres, with a dwelling-house, grist-mill, paper-mill, and other out buildings thereon; also a piece of land on the east side of the river opposite to the dam; also a privilege of two rods wide above the mouth of Bloody brook, for digging gravel; also the privilege of the stream; also one other tract lying on the westerly side of the road opposite to the first described piece, containing about five acres seventy-four rods, &c.

Book 244, leaf 83. Adolphus Durant to David Webster, a mortgage for one thousand dollars, dated 29th March, 1827, (discharged 18th August, 1829,) of a piece of land in Methuen, containing about eight acres, bounded, beginning at a stake and stones, by the road leading by Adolphus Durant's house to Haverhill; also one other piece lying opposite the piece above described, containing about five acres, with all buildings on above lots.

Book 244, leaf 116. Adolphus Durant from Joseph Bodwell, a privilege of a spring of water about four or five rods from Spicket river, and of continuing the raceway, in consideration of five dollars, dated 1st Sept., 1826.

Book 252, leaf 237. Adolphus Durant to Jno. Marsh, et al., a mortgage for one thousand dollars, dated 20th April, 1829, of a piece of land containing about eight acres, beginning at a stake and stones by the highway, thence easterly in a straight line by two white oak trees marked, to a stake and stones by Spiggot river; also a piece situate on the opposite side of the same road, containing about five acres, with all buildings, &c., on said lots. Discharged 18th October, 1830. Book 258, leaf 248.

Book 258, leaf 117. Adolphus Durant to Mercantile Bank, Salem, a mortgage for four thousand dollars, dated 3d July, 1830, of lots of land situate in Methuen, with all the buildings and mills and fixtures,

therein and thereon standing, containing about fourteen acres; the first piece beginning with a stake and stones at the southwest corner by the town road leading from Lowell to Haverhill. The second piece begins with a stake and stones at Spicket river bridge; thence westerly by said river about forty rods to a stake and stones by land of Merrill Gage, (this mortgage was assigned to Edward S. Rand, et al., trustees of Essex Company. Recorded, book 352, leaf 299, and by E. S. Rand et al. to Essex Company, book 353, leaf 241.)

Book 273, leaf 253. Adolphus Durant to Abagail Durant, a mortgage for one thousand dollars, dated 24th February, 1834, all real estate I own in Methuen, viz.: one piece containing eight acres, more or less, bounded, beginning at a stake and stones by the road; thence easterly to Spicket river; thence on the westerly side of said river ten rods; thence across said river to the easterly side; thence northerly and westerly up by said river, including the same to the bridge; thence southerly by the road to the bound first mentioned; also a piece of land on the easterly side of said river opposite the dam; also another piece of land containing four acres, bounded beginning at Spicket river bridge; thence westerly by said river thirty-seven and a half rods; also another piece adjoining the last described piece. (This mortgage was assigned to E. S. Rand et al.; book 354, leaf 11, 1st May, 1845, and by E. S. Rand to Essex Company, 7th June, 1845; book 352, leaf 241.)

Book 275, leaf 91. Adolphus Durant to Moses Grant et al., a mortgage for four thousand dollars, dated 26th February, 1834, (discharged 22d March, 1836; recorded, book 299, leaf 291,) one parcel containing eight acres, bounded, beginning at a stake and stones, by the road; thence running easterly to Spicket river; also a parcel on the easterly side of said river, opposite the dam; also another parcel containing four acres, bounded, beginning at Spicket river bridge, and running westerly by said river, thirty-seven and a half rods; also another parcel of land adjoining the last described piece; also personal property, consisting of machinery, horses, wagons, household furniture, &c.

Book 282, leaf 188. Adolphus Durant to Moses Grant and Otis Daniel, assignment for creditors of Durant's property, real and personal, with schedules of the same, (Oct. 14, 1837;) Grant and Daniel release to Durant all right in above.

Book 282, leaf 189. Adolphus Durant to Moses Grant and Otis Daniel, a quit-claim for ten thousand dollars, dated 23d April, 1835, of a piece of land situate in Methuen, containing six acres, more or less, with a dwelling-house, barn, and other buildings thereon, bounded northerly by the Spicket river, easterly by the road, southerly and westerly by land of Eben'r Gage; also another piece with a paper-mill and other buildings thereon, containing about ten acres, bounded northerly and easterly by Spicket river, southerly by land of Daniel Merrill.

Book 287, leaf 250. Adolphus Durant to Joseph Foster et al., a mortgage for five thousand dollars, dated 29th February, 1836, all my

real estate of one piece of land in Methuen, containing eight acres, more or less, bounded, beginning at a stake and stones, by the road; thence easterly to Spicket river; also a piece of land on the easterly side of said river, opposite the dam; also another piece of land containing four acres, bounded beginning at Spicket river bridge, and running westerly thirty-seven and a half rods; also another piece adjoining the last described piece, (this mortgage assigned to Charlestown Bank 19th May, 1836, book 300, leaf 150, and assignment, S. Dewing to J. Foster, 5th January, 1839, book 310, leaf 162; and assignment, Charlestown Bank and J. Foster to Samuel Hubbard *and* et al., trustees under the will of Gardiner Green, 1st March, 1839, book 311, leaf 113.)

Book 299, leaf 290. Adolphus Durant from Moses Grant and Otis Daniel, a quit-claim for one dollar of a certain piece of land situate in Methuen, containing six acres, more or less, with a dwelling-house, barn, and other buildings thereon, bounded northerly by Spicket river, easterly by the road; also another piece, with a paper-mill and other buildings thereon, containing about ten acres, bounded northerly and easterly by Spicket river; dated 22d March, 1836.

Book 324, leaf 73. Adolphus Durant to Abraham Marland, a mortgage for sixteen hundred dollars, dated 4th Novr., 1840, of two pieces of land situate in Methuen, with a paper-mill, and all the buildings and fixtures thereon; the first piece bounded, beginning at the northwest corner at a stake and stones, by land of Daniel Merrill, formerly of Osgood & Merrill. The second piece contains one-half of an acre, more or less, bounded, beginning at a stake and stones on the easterly side of Spicket river, by land formerly of Enoch Poor, deceased; also the privilege of the fall of water below said dam, and privilege of flowage, &c., &c.; (assigned to Robert Farley and Essex Company.)

Book 329, leaf 62. Maria C. Durant (wife of Adolphus) from Samuel Richardson; 2d, a warranty deed for three hundred and forty dollars, dated 25th July, 1841, of a certain farm lying in Methuen, on the westerly side of the road leading by the house of said Durant, being the same lately owned and occupied by Thomas J. Richardson, excepting a small piece on the easterly side of the road.

Book 329, leaf 73. Adolphus Durant from Abraham Marland, a warranty deed for eighteen hundred dollars, dated 4th November, 1840, of two pieces of land situate in Methuen. The first piece bounded, beginning at the northwest corner at a stake and stones, by land of Daniel Merrill, formerly of Osgood & Merrill. The second piece contains one-half of an acre, more or less, bounded, beginning at a stake and stones on the easterly side of Spicket river, by land formerly of Enoch Poor, deceased, with liberty to build a dam across said river, and join to land formerly of said Poor, where it formerly stood; also to flow said river in a middling run of water as high up as where said Durant's line crosses said river; also the privilege of the fall of water below said dam, so that it be at no time more than one foot above the old mud sill; also a road two rods wide through land of said Daniel;

also to land, lumber and all other articles for his own use at the mouth of said river, and to cart the same through land of said Daniel.

Book 329, leaf 73. Adolphus Durant to John Tenney, a mortgage for fifteen hundred dollars, dated 27th January, 1842, of two pieces of land, with all the buildings thereon, situate in Methuen. The first piece bounded, beginning at the northwest corner thereof, by land of Daniel Merrill; thence north fifty-two degrees, east fifteen rods and sixteen links to a poplar tree by Spicket river. The second piece contains one-half an acre, more or less, bounded, beginning at a stake and stones on the easterly side of Spicket river, by land formerly of Enoch Poor, deceased, meaning hereby to convey all that was conveyed to me by Abraham Marland; (this mortgage assigned to Essex Company.)

Book 336, leaf 257. Adolphus Durant to Jesse Sargent, a warranty deed for six thousand dollars, dated 29th March, 1843, subject to mortgages for eleven thousand five hundred dollars, of a piece of land in Methuen, with my dwelling-house and barn thereon, containing about six acres; also another piece of land lying eastwardly of the above described, on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege; also another piece of land lying southerly of the last mentioned; also one other piece of land containing about half an acre, lying on the easterly side of Spicket river, with the privileges and reservations set forth in Durant's deed from A. Marland, recorded book 329, leaf 73; all the machinery in the mills is included in the foregoing sale.

Book 340, leaf 53. Assignment in chancery, Jas. H. Duncan, master in chancery, to Jacob How, assignee, dated 3d November, 1843, of all estate, real and personal, belonging to Adolphus Durant, 21st October, 1843. EPHM. BROWN.

UNITED STATES OF AMERICA,
District of Massachusetts, ss. City of Boston.

On the twentieth day of January, the twenty-eighth day of January, the seventh day of February, the nineteenth day of February, the twenty-eighth day of February, the twenty-ninth day of March, and the twenty-seventh day of February, the aforesaid witnesses, Robert Farley, John T. Morse, William Beals, Josiah Dearborn, Jacob How, E. H. Safford, and Ephraim Brown, jr., came severally before me, and each witness, while present before me, I examined carefully on oath touching the premises and in reply to the interrogatories hereto annexed. And the examination of each witness, when taken, was reduced to writing by me, and subscribed by him in my presence. These depositions are taken by virtue of the commission hereto annexed, proceeding from the circuit court of the United States within and for the Massachusetts district, and to be used in the cause therein mentioned; and all the directions contained in the said commission were carefully observed by me in executing the same.

GEO. S. HILLARD, *Commissioner*.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss:*

To GEORGE S. HILLARD, *of Boston, esquire, U. S. Commissioner.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of John Tenney and J. W. Carleton, of Methuen, in said district, witnesses to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence & al., respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and fifty-two. ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

CIRCUIT COURT OF THE UNITED STATES, *Dist. of Massachusetts.*

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE and al. } In Equity.

Interrogatories on behalf of the Defendants to John Tenney, J. W. Carleton, of Methuen, in said District.

1. What is your name, age, residence, and occupation?

2. Do you know the complainant? If yea, how long have you known him, and whether intimately or otherwise, and how intimately, or how otherwise. .

3. Have you had any business dealings or connections with him? If yea, when, and what.

4. Have you had any, and what, opportunities for becoming acquainted with the pecuniary condition and affairs of said Durant? If yea, state whether, or not, you were acquainted with the same, or had any knowledge thereof, in the years 1841, 1842, 1843, and 1844, or during any, and what part or portions of said years.

5. If you have stated in answer to the last interrogatory that you were acquainted with the matters therein inquired of during said years, or any part thereof, state what you knew at such times respecting the condition of said Durant as to his affairs and business, and his pecuniary or other resources and property. Declare whether said Durant was, during such time, solvent or insolvent.

6. Was, or was not, said Durant at such times in good credit? Did he, or not, meet and discharge all debts and liabilities against him upon demand, or at maturity, or how otherwise?

7. Declare what debts or liabilities, to your knowledge, the said Durant at such times did pay and discharge upon demands or at maturity, and what, if any, he did not so pay and discharge, and what at that time he owed, and how long the same had been due or owing.

8. Declare whether, or not, you are acquainted with the premises described in schedule A, hereto annexed. If yea, declare whether, or not, said Durant owned or was in possession thereof, or occupied the same at any and what time during the years inquired of.

9. Declare whether, or not, you have had any, and what opportunities of becoming acquainted, and are acquainted with the value of such property as is described in said schedule A, and whether, or not, you have known of any sales or bargains for the sale of lands, water-power, or buildings in said Methuen and Lawrence, and state all such sales you have been personally acquainted with since 1842, and the location of the property relatively to said property described in said schedule.

10. Declare whether, or not, the said Durant, at any, and what times during said years, had any conversation respecting the state of his affairs and business with you, or in your presence. If yea, state all he said on such occasions respecting the same.

11. Declare whether, or not, the said Durant at any such interview, or on any such occasion, declared to you an intention of obtaining his discharge from his debts by taking the benefit of the Insolvent laws of Massachusetts, or of the Bankrupt law of the United States. If yea, state all he said upon such subject as nearly as you can recollect it.

12. Whether, or not, did said Durant at any time apply to you to act as assignee of his estate in insolvency. If yea, when was it; state all that then took place, and what was your answer to such application, if he made any such.

13. Declare whether, or not, you are now, or have been at any

time heretofore, the owner of any land or water-power in the vicinity of the land and water-power described in said schedule annexed. If yea, where was the same and what was its locations, respectively, to said premises described in said schedule? Have you bought and sold land in that vicinity for yourself or others, and how often, and whether other opportunities and occupations have you had, if any, to become acquainted with, and to be a judge of the value thereof?

14. If you shall have stated that said Durant owned and occupied the said premises described in the said schedule at the time inquired of, or any part thereof, declare whether, or not, the same or the buildings, machinery, and water-power thereon, were, at that time, subject to any, and what, mortgages or other incumbrances. If yea, state what the same were, and the amount and dates thereof, so far as you know, and your means of knowledge.

15. Declare what sum, in your opinion, could have been obtained in the months of January, February, and March, 1843, or either of them for said premises described in said schedule A, if a good title could have been given therefor free and clear of all incumbrances; and what sum could have been obtained therefor, provided the purchaser were to take such a title as said Durant could have given thereto, and to clear off all outstanding claims, liens, and incumbrances thereon, and perfect the title thereto at his own expense.

16. Declare whether, or not, the value of real estate and water-power has risen to any, and what extent, since the spring and summer of the year 1843. State what was the market value by the acre of the land described in said schedule, and what was the value of the water-power therein mentioned, and what is the present value, by the acre or foot, of said land, and the present value of said water-power; and state whether, or not, any improvements have been made and capital invested in the vicinity since the time first inquired of, and by whom such improvements have been made, and such capital invested, if you know.

17. If you shall have stated in answer to the preceding interrogatory, that improvements have been made and capital invested in said vicinity by the Essex Company, declare what improvements the said company have made, and what amount of capital they have invested, and whether, or not, any part, and if any, what part or proportion of the difference, if any, between the former value and the present value of said property is due or owing to such investment and improvements.

[Plaintiffs object to this interrogatory as seeking to introduce impertinent and illegal testimony.]

18. Declare whether, or not, said Essex Company have constructed a dam and canal at said Lawrence, for the purpose of creating a water-power there; and if yea, state when said dam and canal was commenced, and whether, or not, it was known to you [and whether, or not, it was matter of general notoriety, or how otherwise,] prior to the commencement of said canal, upon which side of the Merrimack river said Essex Com-

pany would locate their said canal and carry out their enterprise, whether upon the Andover side or the side upon which the present town of Lawrence is located.

[Plaintiff objects to the part in brackets as impertinent and illegal.]

19. Please to state what purchases and sales of real estate, or agreements and bargains for the purchase and sale of real estate, were, within your personal knowledge, made in that part of Methuen which is now called Lawrence, from the commencement of the year 1843 up to the date of the organization of the Essex Company, on the 16th day of April, 1845? Specify the kind, quantity, and location of the property relatively to the property described in said schedule A, and the price given or agreed to be given, and the names of the buyers and sellers in such instance.

20. Declare, if you know, whether the said purchases or bargains for the purchase of land and water-power, if you have certified to any made in said Lawrence, prior to the organization of said Essex Company, were made by the persons making them, acting as the agents of said Essex Company, or were the same made by them as agents for a separate and distinct association of persons buying the said lands and water-power upon their own account and risk, with the view of selling the same at a profit, or how otherwise. If you say they were made by or for a distinct association, declare what the value of land in Lawrence was, by the acre, at the time said association commenced their purchases, and what the value of said premises, described in said schedule, was at the same time, taking the parcels separately; and declare what the value of land in said Lawrence was just prior to the commencement of said canal, and while it was yet uncertain whether said company would locate in Andover or Methuen; and what was then the value of said premises, taking such parcels separately, and as to both periods of time, specifying also how much, more or less, the same could have been sold for, if the purchaser received a title clear of all incumbrances, than if he had taken the estate subject to all incumbrances and claims, and was to perfect his title thereto at his own expense.

21. Declare what said premises could have been sold for at the date of the auction sale of the Essex Company in 1846, and if for more than the same could have been sold for before said company commenced said canal; state to what such difference is owing, in your judgment; state what the population of that part of Methuen, which is now Lawrence, was, before said Essex Company located their works thereon, and what it is now, and what is the present value of a clear title to said premises, and to what the difference, if any, in these respects is owing.

[Plaintiff objects to the stating any opinion in answer to this interrogatory, without qualifying himself as an expert.]

W. H. GARDINER,
By C. G. RIPLEY, *for Dfts.*

[The plaintiff objects to such parts of all the foregoing interrogatories as calls for the statement of the contents of written instruments.]

S. BARTLETT,
By E. D. SOHIER.

A true copy—attest: ISAAC O. BARNES, *Clerk.*

Interrogatories to J. W. Carleton, separately.

1. Declare whether, or not, you are one of the selectmen of the town of Methuen, and whether, or not, there is in your custody, as one of said board, any record of licenses granted to auctioneers or of licensed auctioneers by said town or the selectmen thereof, for the years 1842 or 1843, or either of them. If yea, produce the said record, and declare whether, or not, there is any evidence, in said records, that Stephen Barker, of Methuen, was licensed as an auctioneer by said town or its officers for said years, or either of them? If yea, copy and annex the record of such appointment in the presence of the master.

2. Declare whether, or not, there is in the custody of said board of selectmen, the record of the valuation of estates, real and personal, in said Methuen, and of the persons to whom the same were assessed in the years 1843 and 1844. If yea, produce and examine said record, and declare whether any and what real or personal estate was assessed to said Durant in said years, and what was the valuation of the real and what of the personal estate so assessed to him, and produce said records, and copy the part relating to the said inquiries in the master's presence, and annex it to your answer.

[Plaintiff objects to this interrogatory, as calling for impertinent and illegal testimony.]

3. Declare whether, or not, you attended, or knew of a sale at auction of the property described in said schedule A, at said Methuen, in September, 1843. If yea, examine the advertisement now shown to you, annexed to a copy of a deed from said Durant to Jesse Sargent, and declare whether, or not, you remember to have seen a similar advertisement. If yea, when did you see it, and where was the same posted or otherwise, where you saw it, and if the same was posted in any place; state, if you know, what person or persons posted the same, and how long prior to said sale was the same so posted; how many similar advertisements have you ever seen; if more than one, say where and when you saw them?

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

[The plaintiff objects to so much of the foregoing interrogatories as calls for the contents of written instruments.]

S. BARTLETT,
By E. D. SOHIER.

The witness, Carleton, is desired to answer, in addition to the foregoing, the 6th, 7th, 8th, 9th and 10th interrogatories proposed to John Tenney, separately.

C. G. RIPLEY,
For W. H. GARDINER.

(Copy.)

The following described pieces of land, lying in said Methuen, with the buildings thereon, viz: the piece of land with my dwelling-house and barn thereon, containing about six acres, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage; also, another piece of land lying eastwardly of the above described, on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege thereon, bounded, beginning at a stake and stones on the easterly side of said road, by land of Daniel Merrill; thence easterly by said Merrill's land to Spicket river; thence northerly and westerly by said river to the stone bridge at said road; thence southerly by said road to the first bound, with all the rights of flowing and other privileges appertaining to the same; also, one other piece of land lying southerly of the last mentioned, bounded northerly by land of Daniel Merrill, easterly by Spicket river, southerly and westerly by land of said Merrill; also, one other piece of land, containing about half an acre, lying on the easterly side of said river, bounded westerly by said river, southerly, easterly, and northerly by land formerly of Enoch Poor; also, a road two rods wide, leading from the town road, through land of said Merrill, to the two last-described pieces of land, with a paper-mill standing on them, with the rights of flowing, building a dam, and all other rights and privileges, and subject to the reservations, as set forth in the deed of the same from Abraham Marland, dated November 4, 1840, recorded book 329, leaf 73.

Interrogatories of John Tenney, separately.

1. Declare whether, or not, the complainant at any time in the year 1841, or prior or subsequent thereto, was indebted to you. If yea, in what amount and what security did you hold therefor, if any, and what was the nature therefor, and upon what property?

2. If you say Durant has been (at any time inquired of) indebted to you, state whether he has paid such debt, or any part thereof, or not. If yea, when did the said Durant pay the same?

3. Whether, or not, you have sold, transferred or assigned any debt and any security therefor of said Durant to you, and if yea, what, when, and to whom, and for what consideration did you do so?

4. If you say you have sold or transferred any such debt and security, declare whether, or not, there were at the time such security was taken by you, any prior incumbrances upon the property upon which you took such security, and if so, what were they, and to whom did they belong, and what was the amount thereof?

5. Did said property on which your said debt was secured, exceed in value or fall short of the amount of your said debt and the prior incumbrances, and how much did it exceed or fall short thereof?

[Plaintiff objects to the witness stating his opinion unless he qualifies himself as an expert.]

6. Please look at the advertisement annexed to a certified copy of a deed from complainant to Jesse Sargent, now shown you by the mas-

ter, and declare whether you ever saw any other advertisement corresponding to the words and figures thereof? If yea, when, and where, and in whose hands was it, and under what circumstances did you see it?

7. If you say said Durant showed you said advertisement, declare whether, or not, said Durant requested you to bid for or take any part in the sale of said property; and if yea, declare what he requested you to do in the matter, and what reply you made thereto?

8. Declare whether, or not, at such interview there was any conversation between said Durant and yourself respecting an application to any other person to take any and what part in said sale; and if yea, state who, and what was said in relation to such person and application?

9. Declare whether, or not, at any and what time said Durant communicated to you the fact that he had made application to any person, and whom, in relation to said sale. If yea, state to whom, and what said Durant said respecting such application and the nature and terms thereof, and the object thereof, and the result thereof?

10. Whether, or not, did said Durant ever communicate to you the fact that he had conveyed said property to Jesse Sargent, and stated anything to you respecting a bond or writing from said Sargent to himself, conditioned to sell the same for his benefit. If yea, when was it, and what did he say respecting the transaction?

11. Declare whether, or not, you were present as a witness at a hearing before Judge Wilde in the court-house in Boston, upon the appeal of said Durant from refusal of the master in chancery to discharge him from his debts. If yea, when was it, and who summoned you? Whether, or not, was said Durant examined on oath respecting said deed to Jesse Sargent and said agreement from Jesse Sargent, and did he say anything, and if any, what respecting it; whether, or not, was Stephen Barker, of Methuen, present at said hearing. If yea, did he, or not, leave the room while it lasted; in what room was it, and how long did it last?

12. Declare whether, or not, you ever held a lease from said Durant, of any and what part of the property described in said schedule. If yea, when did you take the same, and for what purpose? If the said lease was in writing, annex the same or a true copy thereof, or state why you do not?

13. Declare whether, or not, you were present at a sale by Jacob How, assignee of said Durant, of said Durant's interest in the property described in said schedule. If yea, when, and where did it take place?

14. Whether, or no, was the said Barker present at said sale, and whether, or no, any notice was given to the company then assembled, or to the auctioneer in the hearing of the company by any person, and whom, to the effect of forbidding the auctioneer to proceed in said sale, or of cautioning all persons present against buying or bidding upon the said property, or respecting any right, interest, or claim of said Barker therein or otherwise, concerning the business of the said auction?—if yea, state particularly what the said notice was, and by whom given?

15. Did, or did not, the said Barker address any order, direction or remark to the auctioneer in the hearing of the company, respecting the business of the auction; if yea, declare what it was?

16. Declare whether, or not, Joseph Foster, of Newton, was present at said sale; and whether, or not, the property was struck off to him as the highest bidder; and whether, or not, James Durant, brother of the complainant, was also present, and whether, or not, said James bid against said Foster; and how frequently, and what sums; and who else bid for said property; and whether, or not, was said James then worth any, and what property, and what was his business, or occupation, and station in life.

17. Declare whether, or not, the complainant was present, and if he did or said anything to said James or any other person at said sale. State his words or actions, so far as you observed the same and recollect them.

18. Declare whether, or not, you acted as one of the assessors of Methuen, for the year 1843, and if yea, state what the rates of valuation of real estate were in that year established at by the assessors, as compared to the true value of the same. To whom was the said property described in said schedule assessed, and at how much?

19. Declare whether, or not, you were a member of the board of selectmen, of said Methuen, for the said year. If yea, declare whether, or not, said board licensed Stephen Barker as an auctioneer for said town in said year, or whether, or not, he was at any time during said year a licensed auctioneer in or for said town?

20. If, in your answer to the foregoing interrogatories, or any of them, you have testified that you held a mortgage upon any property of said Durant as security for any debt owing by said Durant to you, and that you assigned said mortgage to the said Essex Company, please to look at the mortgage deed now shown to you by the master, signed by said Durant, and dated January 27, 1842, and the assignment endorsed thereon from you to said Essex Company, and declare whether, or not, you identify the same as such mortgage and assignment testified to by you, or how otherwise the fact is in relation thereto?

W. H. GARDINER.
By C. G. RIPLEY, *for Def'ts.*

[The plaintiff objects to so much of each of the foregoing interrogatories as call for the statements of the contents of written instruments.]

S. BARTLETT.
By E. D. SOHIER.

[The defendant objects to the foregoing objection, as not being sufficiently definite to enable the defendant to know which of the foregoing interrogatories in particular are excepted to.]

W. H. GARDINER.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Cross-interrogatories in Plaintiff's behalf, to John Tenney and J. W. Carleton.

1. Say whether the real estate in that part of Methuen now called Lawrence, south of Spicket river and east of Jackson street, did not increase greatly in value after the Messrs. Saunders, Nesmith and Lawrence, or their agents, began to obtain bonds and refusals of lands in the vicinity, and did it not increase still more rapidly after they actually commenced purchasing in said vicinity?

2. Do you, of your own knowledge, know what title the said Durant could have given, or procured to have been given, to the property inquired about in the defendant's 15th direct interrogatory? Do you, of your own knowledge, know what mortgages, if any, the said property was subject to at the time inquired about, and if so, how do you know these facts?

3. Was it not known to you that the said Saunders, Nesmith and Lawrence, were purchasing and obtaining refusals of lands for the purpose of having them afterwards conveyed to the Essex Company, or to some mill-power corporation, and was it not known by you, or supposed and expected by you, that such corporation would expend large sums of money where they should locate, and greatly increase the value of real estate in their vicinity?

4. State, if you can, what bonds and refusals of lands had been taken by the said Saunders, Nesmith and Lawrence, up to 1 April, 1845, or by persons acting for, or in concert with them; and state, if you know, when they first made actual purchases of lands?

5. Have you been conversant with the value, or the sales and purchases of paper-mill property? Do you know what said Durant paid for the lots in question? Do you know what he expended therein while he owned them? Do you know what water-power and privileges were appurtenant and belonging to said lots? If yea, please declare and state also the number of engines which could be driven by said power, and what the head and fall of the powers were?

[Defendants object to so much of this interrogatory as relates to measurement of water-power, unless the witness shall qualify him to testify as an expert in that particular.]

6. If, in answer to the defendant's 4th and 5th interrogatories, or either of them, you have stated the pecuniary condition of said Durant in 1841, 1842, 1843, 1844, state every fact known to you, personally, showing what his debts were, giving names and dates, and of what his property consisted, describing the same, and what your means of knowledge in regard to the same are, whether merely from hearsay or not, and whether you can state and have stated of your own knowledge

all the property, and notes, and bills, receivable of said Durant during said period, or any part thereof; and if so, how you know the facts?

7. If, in answer to the defendant's 6th interrogatory, you have stated that said Durant was not in good credit, or did not meet and discharge all debts against him at maturity, please reconsider your answer and say how much and what part thereof is from hearsay, and how much and what part from your own knowledge, and specify each and every debt which to your knowledge said Durant did not pay at maturity, giving the amount and the date of the maturity of each?

8. If, in answer to the defendant's 7th interrogatory, you undertake to specify the debts and liabilities said Durant did, and those which he did not pay, be particular and give the dates and the amounts of all and each of such debts and the consideration of each, and whether he paid them or did not, how you know the facts you state relative thereto?

9. If, in answer to the 12th direct interrogatory, you say he applied to you to be his assignee, please be particular and fix the date of such application, and refer to any accounts or dates of other remembered transactions to fix the time of such application?

10. If, in answer to the 13th direct interrogatory, you say that you have heretofore been the owner of land or water-power in the vicinity of the land and water-power in question, be particular and say when you purchased, and how long you owned the same, and whether you still own it, and if you do not, state when and to whom you sold it, and at what price you bought, and at what price you sold the same?

11. If, in answer to the 10th or to the 11th interrogatories, or to either of them, you say that you had any conversation with said Durant, relative to the state of his affairs, or relative to his taking the benefit of the Insolvent or of the Bankrupt laws, say whether said Durant did not at said conversation, or at some and how many of them, declare to you that he was solvent, and able to pay all that he owed; and that he should not take the benefit of said laws, for the reason that he was solvent and able to pay all his debts?

Cross-interrogatories to J. W. Carleton.

1. State who was or were the authorized and licensed auctioneers in said town of Methuen in 1842, 1843.

2. Was said Barker ever an auctioneer in said town; if yea, when, and during what years?

3. Do you not know that said Barker, in 1843, made sales at auction as the agent or in the behalf of one Annis, who was a licensed auctioneer in said town?

[Defendants object to the first and second of the foregoing cross-interrogatories, as seeking to introduce secondary evidence, and to the third as assuming a fact not proved.]

W. H. GARDINER, *for Def'ts.*

Cross-interrogatories to John Tenney, separately.

1. If, in answer to the plaintiff's 16th interrogatory, you say that the said James Durant was or was not worth any property, state how you

know what you have stated to be a fact. Do you know what sums he owed? If yea, please specify the same, with amounts and dates. Do you know what property and choses in action he owned?

2. Say whether or not the assignment of the mortgage by you to the Essex Company, inquired about in the plaintiff's 20th interrogatory, was made by you at the request or instance of said Durant.

3. Are you not a counsellor at law? Were you not employed or retained by the said Durant, in 1843, as his counsel?

4. Do you know whether or not, in the spring of 1843, and when the said Durant did or did not have any intention of taking the benefit of any Insolvent or Bankrupt law? and state your means of knowledge. Were you his counsel during the time inquired about? Did he or not state to you that he could pay all his debts, or that he would not apply for the benefit of any such act?

5. Were you or not employed or consulted by the said Durant at the time he applied for the benefit of the Insolvent law, and relative thereto? If yea, say when it was.

6. If you have said that you were a creditor of said Durant's subsequent to 1841, declare whether he made you any and what payments after the 28th of March, 1843? If yea, specify the dates and amounts of such payments. Declare, also, whether you endorsed for said Durant subsequent to 1841; and if yea, declare what paper, if any, on which you were liable for him, fell due after said 28th of March, 1843, and the date when each liability became due, and state the amount of each; and say if the said Durant did not pay all such sums for which you were liable up to some time in July, 1843, and what amount in all he paid after 28th March, 1843, and each sum he so paid. Did he or not pay a large sum in Aug., 1843, for which you were also liable; if yea, how much was it? Be particular, and examine your books and papers, if necessary, to enable you to answer this interrogatory.

7. Were you present at the hearing before Judge Wilde on the question of Durant's discharge in insolvency; if yea, who was present thereat? Was a discharge refused to said Durant; if yea, was it on the ground that he had made a conveyance of real estate to Jesse Sargent, or was it on another and different ground?

8. Did you take and preserve minutes of the proceedings and testimony had and produced at said hearing? If so, produce and annex them, or a copy thereof.

9. Did Judge Wilde, in refusing said Durant's discharge, refer in any manner to any conveyance from the plaintiff to Jesse Sargent? If so, state what he said, as nearly as you can, in his own words.

10. Was or not the said plaintiff and his brother, James Durant, and yourself, each examined before said judge; and was it or not testified by the plaintiff—you, or by one of, and which of, you—that plaintiff had, within six months from the time of his application to be declared insolvent, paid or secured to you, or to the said James, an antecedent debt; and did not the judge thereupon declare, that, however honorable

such payment might have been, it constituted a fraud upon the act, which must deprive the plaintiff of his discharge?

11. Where did the sale inquired about in the plaintiff's 14, 15, and 16th interrogatories to you take place; was it not in the mill, where the plaintiff and his brother James were at work?

12. Are you not a counsellor at law? If yea, have you not heretofore been employed and retained by said Durant? If yea, please say whether any and which of the conversations had between you and said Durant, and inquired about in defendant's direct interrogatories, or testified to by you in any of your answers to the direct interrogatories, were had in the relation of counsel and client, or when you were consulting with him as his counsel?

13. If, in answer to the 10th direct interrogatory proposed to you separately, you say that said Durant made any communications to you as therein is inquired about, declare whether you were not at said time acting as his counsel and legal adviser, and whether such communications were not made to you as such.

14. Have you any personal knowledge of the pecuniary ability of James Durant at the time of the auction sale inquired about in the 13th direct interrogatory proposed to you separately? If yea, declare what his assets were; give sums and dates, and what his liabilities were, giving sums and dates.

15. If, in answer to any of the foregoing interrogatories, you have stated that said Durant has made you any payments, declare whether, to your knowledge or belief, any—and if any, which—of said payments were made to you with an intention to defraud the Insolvent laws of Massachusetts?

S. BARTLETT,
By ED. D. SOHIER.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Additional Interrogatories on the part of the Defendants, to John Tenney.

If you shall have answered the tenth cross-interrogatory proposed to you separately, in the affirmative, please to reconsider your said answer and give the precise words of the judge in refusing said Durant his discharge, or state why you do not?

W. H. GARDINER,
By C. G. RIPLEY, *For Defts.*

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

Answers of John Tenney to the Interrogatories on behalf of the Defendants, to John Tenney and J. W. Carleton

Deposition commenced March 24.

1. To the first interrogatory he says—My name is John Tenney; I am fifty-two years old; my residence is Methuen, and I am an attorney and counseller at law.

2. To the second interrogatory he says—I know the complainant; I have known him for twenty years. Previous to the last five or six years I was on rather intimate terms with him.

3. To the third interrogatory he says—I have had business dealings and connections with him. I have done law business for him, and have endorsed for him; I cannot specify the times, but it was between 1829 and 1843.

4. To the fourth interrogatory he says—I have had opportunities for becoming acquainted with the pecuniary condition and affairs of the said Durant. I have been employed professionally, both for and against him. I was acquainted with the same in the years 1841, 1842, 1843, and 1844.

5. To the fifth interrogatory he says—During the years 1841, 1842, and 1843, I was in the habit of endorsing notes for him, and had general security therefor. This led me to have conversation both with him and others, as to the state of his affairs. From these I came to the conclusion in my own mind, that his pecuniary condition in those years was not good, and that he was in point of fact insolvent.

6. To the sixth interrogatory he says—He was not in good credit in those years. He did not meet and discharge all debts and liabilities against him upon demand or at maturity.

7. To the seventh interrogatory he says—In 1843 there was a note due June 16, made by him and endorsed by me, for one hundred and fifty dollars. I cannot state for what time the note was made. He did not pay this at maturity, and I was obliged to take it up. There was another note of one hundred dollars, due July 3d, of the same year, made by him and endorsed by me, which he did not pay at maturity, and which I was obliged to take up. There was another on sixty days, for four hundred dollars, made by him and endorsed by me, due July 14, 1843, which he failed to pay at maturity, and which I was obliged to take up. There was another for five hundred dollars, due August 3, 1843, made by him and endorsed by me, which he failed to pay at maturity, and which I was obliged to take up. The above are all that I have any memorandum of, but I think there were others. I am not able to say what debts he did pay or discharge at maturity during those years. I endorsed several notes for him during those years which I never heard from, and I presume that he paid them at maturity, but I have no memorandum of them here.

8. To the eighth interrogatory he says—I am acquainted with the premises described in the schedule A, hereto annexed. The said Du-

rant owned and was in possession and occupancy of the said premises during the years 1841, 1842, 1843, and 1844.

9. To the ninth interrogatory he says—I have bought and sold considerable land in that vicinity on my own account. I assisted in the purchases made by Messrs. Saunders and others for the Essex Company, aiding them in most of their negotiations. In March, 1845, I bought on my own account, in conjunction with Mr. Saunders, the Tarbox farm so called, of about thirty-three acres. This was on the Spicket river, about fifty rods above the upper piece described in schedule A, and on the opposite side of the river. In March or April of the same year, I purchased, in conjunction with Mr. Josiah G. White, a piece of land of eleven or twelve acres, lying, say forty or fifty rods east of the upper mill, described in the said schedule. In the last of April of the same year, I purchased for Saunders, Nesmith, and Lawrence, the Poor farm, so called, I think of about two hundred acres, part of which lies on the Spicket river, adjoining the lower mill-lot described in said schedule. I have known of nearly all the purchases of land made by or for the Essex Company. I have made deeds for the conveyance of water-power on the Spicket river, since 1842, but have no other knowledge thereof. The above transactions have given me ample opportunities for becoming acquainted with the value of such property as is described in said schedule A.

10. To the tenth interrogatory he says—The said Durant, during said years, had frequent conversations with me respecting the state of his affairs and business. I cannot state all he said. He is much in the habit of talking about his own affairs, and I did not charge my memory with what he said. He talked much of what he was going to do, and detailed his plans and prospects.

11. To the eleventh interrogatory he says—All I can state upon this point is, that some time before he applied for the benefit of the Insolvent law of Massachusetts, but how long before I cannot say, he hinted to me once or more that he was "going to settle his estate," using those words, by which I understand that he was going to take the benefit of the Insolvent law.

12. To the twelfth interrogatory he says—The said Durant did apply to me to act as assignee of his estate some time after he had petitioned, and before the first meeting of his creditors, and I declined.

13. To the thirteenth interrogatory he says—I now own the Tarbox farm, mentioned in my answer to the ninth interrogatory, in conjunction with Mr. Saunders and Mr. Hazen. I also own a portion of the land stated in the answer to the said interrogatory to have been bought in conjunction with Mr. White. I also own, in conjunction with Mr. Saunders and Kittredge, the Herrick place, so called, on the Spicket river, about half a mile above the upper lot described in said schedule A. The rest of this interrogatory is answered in my reply to the ninth interrogatory.

14. To the fourteenth interrogatory he says—I had a mortgage myself on the lower mill and lot, for fifteen hundred dollars. I do not

remember the date. It must have been as early as 1841 or 1842. This was a second mortgage. The first mortgage was Abraham Marland, of Andover, for about fifteen hundred dollars, I think; the date I do not know. Judge Hubbard and als. had a mortgage on the upper mill and lot, and house lot, as trustees, for about four thousand dollars. This was sued, and I appeared in court one or two terms for Mr. Durant, but there was no defence. The mortgagees took out a writ of possession, and possession was delivered in my presence. As to other incumbrances I can only speak from hearsay.

15. To the fifteenth interrogatory he says—In my opinion the said property, with a perfect title, would have been worth, to a person who wanted such property, in January, February, or March, 1843, about ten thousand dollars; certainly not more. What such a title as Durant could have given would have been worth I cannot say, without a more accurate knowledge of the incumbrances.

16. To the sixteenth interrogatory he says—The value of the said real estate and water-power has risen greatly since the spring and summer of 1843. I cannot answer as to the particulars inquired of in the interrogatory, but the whole estate is now worth more than twenty times as much as it then was. This increased value is owing to the improvements made, and the capital invested in that region, by the Essex Company.

17. To the seventeenth interrogatory he says—The said Essex Company have built a large machine shop and foundry in the vicinity; have built a great many dwelling-houses and shops, have dug a canal, and, generally, directly or indirectly, have converted a rural region into a large manufacturing town. The Essex and other companies have invested many millions of dollars there. These investments and improvements were the cause of the improved value of the said property.

18. To the eighteenth interrogatory he says—The said Essex Company have constructed a dam and canal at said Lawrence, for the purpose of creating a water power there. They were commenced in the summer of 1845. It was not known by me, and it was not generally known, on which side the said canal was to be dug, until a very few days before the works were commenced.

19. To the nineteenth interrogatory he says—I assisted in the purchase of nearly all the land lying in the Methuen part of Lawrence, between the autumn of 1844 and the organization of the company. For the farm of the town of Methuen, bought of the town by Messrs. Saunders and others, of about one hundred and seventy-five acres, about forty-five hundred dollars were paid. This was about three-quarters of a mile southwest of the land described in schedule A. The Tarbox place was bought of John Tarbox for twelve hundred dollars. It comprises thirty-three acres. The piece bought by Mr. White and myself was about eleven acres, and was bought of Edwin Sargent for about forty dollars an acre, I think. The Enoch Poor farm, of about two hundred acres, was bought by Messrs. Saunders and others in April, 1845, when real estate had risen greatly. They bought it of the heirs

of Enoch Poor, and paid eleven thousand dollars. The relative position of these three last-mentioned estates to the premises in schedule A has been herein before mentioned. The Herrick place, of thirty-seven acres, bought of James D. Herrick, was taken at a thousand dollars. It was bought by Mr. Saunders and myself. This was half a mile from Durant's upper mill. I am not able to give any further particulars in reply to this interrogatory.

20. To the twentieth interrogatory he says—The said town farm of Methuen, the Enoch Poor farm, and the Herrick place, were bought by or for persons who bought on their own account, with a view of selling again at a profit to the Essex or some other company. I should think that the lands in what is now Lawrence was not worth more than thirty dollars an acre when these persons began to make their bargains in the fall of 1844. In April, 1845, before the location of the canal was known, I think it had doubled in value. Without undertaking to specify as to each particular parcel, I think that the premises in the said schedule were not worth more than ten thousand dollars in the fall of 1844, and in April, 1845, they might have been worth double, that is, with a perfect title, which is all I give an opinion upon.

21. To the twenty-first interrogatory he says—I think that the premises in the said schedule could have been sold at auction, at the time of the auction sale of the Essex Company in 1846, for from five to ten cents a foot, that is, the greater part of them, provided they had been laid out in streets. The enhanced value is owing to the Essex Company. The population of that part of Methuen, which is now Lawrence, before the said company located their works, was less than two hundred, and now it is not far from eight thousand. I have already answered as to the present value of the said premises, and to what the difference is owing.

Answers to the Interrogatories to John Tenney, separately.

1. To the first interrogatory he says—The said complainant was indebted to me in 1842, and subsequently. I do not remember as to previous years. In the spring and summer of 1843 he was indebted to me over fifteen hundred dollars. I held as security a second mortgage on the lower mill and lot so called, and also paper in the hands of commission merchants in Boston; a mortgage on horses, carriages, &c., and a mortgage on his household furniture.

2. To the second interrogatory he says—The said Durant borrowed of me in May, 1843, one hundred dollars, for a few days, of which he paid me eighty dollars. In the course of 1845, I received two hundred and thirty-six dollars from commission merchants in Boston, proceeds of paper which I held as collateral. The said Durant did not pay me anything in addition to the above.

3. To the third interrogatory he says—I have sold and assigned Durant's note for fifteen hundred dollars, with the mortgage on the lower mill, and the mortgage on the horses and carriages to the Essex Company, May 14, 1845, for twelve hundred and seventy-three and $\frac{44}{100}$ dollars.

4. To the fourth interrogatory he says—At the time the said security was taken, there was a prior mortgage on the lower mill to Abraham Marland for fifteen hundred dollars and interest.

5. To the fifth interrogatory he says—At any time before the fall of 1844, the property so held as security fell short in value of the amount of my debt, in my opinion, but how much I cannot say. After the Essex Company was formed, it probably exceeded it in value.

6. To the sixth interrogatory he says—I cannot swear that I ever saw such an advertisement before. The said Durant told me about it, and perhaps showed it to me.

7. To the seventh interrogatory he says—The said Durant requested me to attend the auction, and bid the property off for his benefit; I declined.

8. To the eighth interrogatory he says—Durant asked me whom he could get that would be safe and true to him; I named Stephen Barker. He at first objected to him, but finally concluded to go and see him.

9. To the ninth interrogatory he says—He told me that he had applied to Mr. Barker, and he had agreed to attend the auction, and bid it off for him. He said Mr. Barker was to have a fair compensation for his time and trouble.

10. To the tenth interrogatory he says—I have no recollection of any such conversation.

11. To the eleventh interrogatory he says—I was present as a witness upon a hearing before Judge Wilde, in the court-house in Boston, upon the appeal of said Durant from refusal of the master to give him a discharge. I think it was some time in the summer of 1844. I cannot tell who summoned me, whether Durant or Foster, an opposing creditor. Said Durant was examined on oath; but I cannot swear whether he was examined respecting said deed to Sargent and said agreement from Sargent, but think he was. Stephen Barker, of Methuen, was present. I saw him in the room during the examination, and did not see him leave the room. It was in the law library, and lasted an hour and a half or two hours.

12. To the twelfth interrogatory he says—I have no recollection of ever having held such a lease.

13. To the thirteenth interrogatory he says—I was present at the said sale. I think it was in the spring of 1844, but am not quite certain. It was in Durant's paper-mill; the upper mill so called.

14. To the fourteenth interrogatory he says—I think the said Barker was present. I have no recollection of hearing any notice by way of cautioning or forbidding, as is herein inquired of, given by or to any one.

15. To the fifteenth interrogatory he says—I have no recollection that Barker addressed any order, direction, or remark to the auctioneer whatever.

16. To the sixteenth interrogatory he says—Joseph Foster, of Newton, was present, and the property was struck off to him as the highest

bidder. James Durant, brother of the complainant, was present, and bid against Foster; I cannot say how frequently or what sums. No other person bid, I think. I think James Durant was not worth any property. He was a journeyman paper-maker, and worked for his brother.

17. To the seventeenth interrogatory he says—The complainant was present. He stood near his brother James, and seemed to be prompting him while he was bidding. He spoke to him in a low voice, but I could not hear what he said.

18. To the eighteenth interrogatory he says—I acted as one of the assessors of Methuen in 1843. The rate of valuation of that year, as established by the assessors, was three-fourths of the true value. The property in the said schedule was assessed to Adolphus Durant. This property, and a farm of twenty-seven acres, with two houses adjoining, and a piece of peat meadow land, in all fifty-two acres, were valued at eight thousand dollars.

19. To the nineteenth interrogatory he says—I was a member of the board of selectmen of said Methuen for the said year. The board did not license the said Barker as an auctioneer during said year, and he was not at any time during said year a licensed auctioneer in or for said town.

20. To the twentieth interrogatory he says—I do identify the mortgage and assignment herewith shown to me, as the said mortgage assignment testified to by me.

Answers to the Cross-interrogatories proposed to John Tenney and J. W. Carleton.

1. To the first cross-interrogatory he says—I answer both clauses of this interrogatory in the affirmative.

2. To the second cross-interrogatory he says—I do not know, of my own knowledge, what title the said Durant could have given to the property inquired about. I have stated all I know as to the mortgages on said property in my answer to the fourteenth direct interrogatory.

3. To the third cross-interrogatory he says—I answer both clauses of this question in the affirmative.

4. To the fourth cross-interrogatory he says—The said Saunders, Nesmith, and Lawrence, had, before April 1, 1845, taken bonds of nearly all the lands from the Spicket river up the Merrimack, southwesterly, for two or three miles, and about a mile back, on an average, and about the same amount on the Andover side of the river. They began to take deeds in fee on or about April 1, 1845.

5. To the fifth cross-interrogatory he says—I am not particularly acquainted with paper-mill property, and have never bought or sold such property. I do not know what Mr. Durant paid for said lots, or what he expended thereon. I have no such knowledge of the water-power as enables me to answer the part of the interrogatory relating thereto.

6. To the sixth cross-interrogatory he says—In my answer to the

seventh of the direct interrogatories addressed to me and Mr. Carleton, jointly, I have stated several debts which, to my knowledge, the said Durant did not meet at maturity. I also know that he owed a debt of about ninety dollars to the late Mr. Saltonstall, of Salem, which I sued and recovered judgment upon in 1840 or 1841, which he has never paid. He also owed a note to the Methuen Company, in the years enumerated, of about two hundred dollars, which I subsequently sued and recovered judgment upon, and which has never been paid. In April, 1843, he owed me about three hundred dollars on account, which he did not pay. I do not now recall any further debts known to me personally, except those debts secured by mortgages herein before mentioned. I know what Durant's real estate was, but I do not know as to his personal property, bills, and notes receivable during those years, of my own knowledge.

7. To the seventh cross-interrogatory he says—I cannot answer this interrogatory any more fully than I have herein before done. My opinion as to Durant's credit, was founded upon what I knew, upon his own statements, and from common report.

8. To the eighth cross-interrogatory he says—I cannot answer this interrogatory any more fully than I have already done in my answers to the said seventh direct interrogatory and the sixth cross interrogatory.

9. To the ninth cross-interrogatory he says—I cannot fix the time any more definitely than I have already done, and I have no account or memorandum to refer to.

10. To the tenth cross-answer he says—I bought the Tarbox farm, before mentioned, in March, 1845, for twelve hundred dollars, and own it still, with Mr. Saunders and Mr. Hazen. Mr. White and I bought the Sargent piece in April, 1845, for forty dollars an acre, I think. We sold the greater part of it in 1846 or 1847, at prices varying from twelve cents a foot to two hundred and fifty dollars an acre. We sold to Drury Fairbanks, Obadiah Dustin, and another person, whose name I do not recollect. Mr. Saunders, Mr. Kittredge, and myself bought the Herrick place of the Essex Company in 1847, when speculation was at the height, for twelve thousand dollars; we hold it still. In 1844 I had bought this place for the said company. Mr. Saunders and I bought the Wells farm, about a mile north of Durant's mill, in October, 1845, for forty-seven hundred and fifty dollars. We sold a part of it, in the fall of 1846, to Wm. R. Pearmain and others, and the rest to N. Emmons Ide, in the spring of 1847. For the two sales we received over twenty-three thousand dollars.

11. To the eleventh cross-interrogatory he says—The said Durant used to say sometimes, that he was solvent and able to pay his debts, and sometimes he used to express a different opinion. I do not remember to have heard him say anything about taking the benefit of the Bankrupt or Insolvent laws, any further than I have already stated. I have heard him express apprehensions, while the U. S. Bankrupt law was in force, lest he should be forced into bankruptcy by his creditors.

Answers to the Cross-interrogatories to John Tenney, separately.

1. To the first cross-interrogatory he says—I answer, as to James Durant's property, from general report, from his own statements, and from my having sued him at various times for small debts. I do not know what sums he owed, or what property he had. He was notoriously a poor man, and I do not believe that he had any property.

2. To the second cross-interrogatory he says—It was not.

3. To the third cross-interrogatory he says—I am a counsellor at law. I think that I was not retained or employed by said Durant as counsel in 1843. He did not pay me anything for such service, and I made no charge for such.

4. To the fourth cross-interrogatory he says—I do not know whether the said Durant, in the spring of 1843, did or did not have any intention of taking the benefit of any Insolvent or Bankrupt law. I did not consider myself as his counsel at that time. I think that in that spring I heard him say that he would not take the benefit of any such act, but I will not be positive; and, I think, about that time I also heard him say that he thought he should pay all his debts.

5. To the fifth cross-interrogatory he says—I did not consider myself retained by him at the time he applied for the benefit of the insolvent law. I have no doubt that he talked with me about it. He was in the habit rather of telling me what he was going to do, than of asking my advice.

6. To the sixth cross-interrogatory he says—The said Durant did not make me any payments after March 28, 1843, except as I have stated in my answer to the second of the direct interrogatories addressed to me exclusively. I endorsed for Durant, subsequent to 1841, a note for one hundred and fifty dollars, fell due June 16, 1843, signed by him and endorsed by me, which he did not pay. A note for one hundred dollars, signed by him and endorsed by me, fell due July 3, 1843, which he did not pay. A note for four hundred dollars, signed by him and endorsed by me, fell due July 14, 1843, which he did not pay. A note for five hundred dollars, signed by him and endorsed by me, fell due August 3, 1843, which he did not pay. He did not pay all sums for which I was liable, up to July, 1843. I am not able to say what he paid after March 28, 1843. I do not know whether he paid a large sum, for which I was liable, in August, 1843. I have no papers, and nothing on my books, by which I can tell anything further.

7. To the seventh cross-interrogatory he says—I was present at the said hearing. Stephen Barker, James Durant, N. W. Hazen, esq., Judge Ward, of Salem, and a number of others, were present. A discharge was refused to said Durant, but I do not recollect on what ground.

8. To the eighth cross-interrogatory he says—I did not take any minutes.

9. To the ninth cross-interrogatory he says—I do not recollect.

10. To the tenth cross-interrogatory he says—The said Durant, James Durant, and myself, were all examined, but I have no recol-

lection of their testimony or of my own. I have a strong impression that the refusal of the discharge was grounded on Durant's own testimony. I have no recollection as to the judge's declarations.

11. To the eleventh cross-interrogatory he says—It was in the mill where the plaintiff and his brother James were at work.

12. To the twelfth cross-interrogatory he says—I am a counsellor at law, and have been retained by the said Durant in some cases heretofore. I do not think that the conversations I have testified to were had between me and him in the relation of counsel and client.

13. To the thirteenth cross-interrogatory he says—I have no recollection of his making such a communication to me.

14. To the fourteenth cross-interrogatory he says—I have no other knowledge thereof than as stated in my answer to the first of the cross-interrogatories to me separately.

15. To the fifteenth cross-interrogatory he says—I do not think that said Durant ever made me any payment with an intention to defraud the Insolvent laws of Massachusetts.

To the additional interrogatory on the part of the defendants, he says—I know not.

JOHN TENNEY.

Answers of J. W. Carleton to the Interrogatories on behalf of the Defendants, to John Tenney and J. W. Carleton.

1. To the first interrogatory he says—My name is J. W. Carleton; I am fifty-eight years old; I reside in Methuen; I am a trader.

2. To the second interrogatory he says—I know the complainant and have known him for twenty years or more. I have known him rather intimately as a business acquaintance.

3. To the third interrogatory he says—I have had business dealings with him between 1833 and 1842. I sold him goods and bought paper of him.

4. To the fourth interrogatory he says—I have had opportunities for becoming acquainted with the pecuniary condition and affairs of said Durant. These opportunities arose from my having been a director in the Andover Bank, and afterwards in the Bay State Bank, in Lawrence, and these opportunities extended over the years 1841, 1842, 1843, and 1844.

5. To the fifth interrogatory he says—I cannot say whether the said Durant was solvent or insolvent during the years inquired of, but his pecuniary condition was considered doubtful, and I considered him to be in embarrassed circumstances.

6. To the sixth interrogatory he says—He was not in good credit, and did not meet and discharge all debts and liabilities against him upon demand, or at maturity.

7. To the seventh interrogatory he says—I cannot answer this question. I can only speak from general impressions and recollections.

8. To the eighth interrogatory he says—I am acquainted with the premises described in the said schedule A. Mr. Durant, during the

years inquired of, occupied the two parcels of land first described therein. As to the other parcels, I cannot say of my own knowledge. Mr. Durant was reputed to be the owner of the estate he occupied.

9. To the ninth interrogatory he says—I have had opportunities of becoming acquainted with the value of such property as is described in said schedule A, from having always been a resident in Methuen, and from my having been a dealer in real estate. I have also frequently acted as an appraiser of real property. My knowledge of the sales, or bargains of the sale of lands, water-power or buildings, in Methuen and Lawrence, is derived mainly from hearsay, within the period inquired of, and does not enable me to testify thereof.

10. To the tenth interrogatory he says—Some time in those years, and a short time before his mill was sold at auction, Mr. Durant had a conversation with me respecting the state of his affairs. He said he was going into chancery. He wanted to find some one to buy his paper-making establishment. He inquired of me respecting Mr. Tenney and Mr. Barker, whether or no I thought they would be true if he got them to bid it off, and inquired of me which of the two I thought he had better employ. There was a good deal said, but the above was the substance.

11. To the eleventh interrogatory he says—He declared his intention of taking the benefit of the Insolvent law of Massachusetts. He said he had a number of debts hanging over him, and he wanted to get rid of them, or something to that effect.

12. To the twelfth interrogatory he says—I do not remember that he ever made any such application to me.

13. To the thirteenth interrogatory he says—I own a small piece of land in the vicinity of the land and water-power described in said schedule. I do not remember to have owned any other land in their immediate vicinity. The land I own is about half way between the two paper-mills, on the opposite side of the river. I have bought and sold land for myself and others, at some distance from the said premises, since the formation of the Essex Company. I do not know of any other opportunities or occupations enabling me to judge of the value thereof, except as herein before stated.

14. To the fourteenth interrogatory he says—I do not know of my own knowledge as to such incumbrances, if any.

15. To the fifteenth interrogatory he says—I can only answer the first part of this interrogatory. I think that ten thousand dollars would have been a fair price for the said property in those months, with a good title. I cannot say that this sum could have been obtained.

16. To the sixteenth interrogatory he says—The value of real estate and water-power, in that neighborhood, has risen very greatly since the spring and summer of 1843, but I don't know as I can answer definitely how much. I have already stated the value of the said property in the spring and summer of 1843. At this time the same property is worth at least ten times as much, but I cannot particularize it by the acre or foot, or the water-power alone. There has been a large amount

of capital invested, and great improvements made, in that vicinity since that period by the Essex, Bay State, and Atlantic Companies.

17. To the seventeenth interrogatory he says—The said company have built a dam, dug a canal, built a large machine shop, a large number of tenements, and, in short, directly or indirectly, have mainly built up the whole town of Lawrence. They have expended a million and a half of dollars of capital there. Nearly all of the enhanced value of the said premises is due to the said investment and improvements.

18. To the eighteenth interrogatory he says—The said Essex Company have constructed a dam and canal at said Lawrence for the purpose of creating a water-power there. They were commenced in the summer of 1845, I think. Just before they began to build, it was a matter of general notoriety, and was known to me that the said canal would be located on the Methuen side of the river where it now is.

19. To the nineteenth interrogatory he says—I am not able to answer this question.

20. To the twentieth interrogatory he says—I am not able to answer this interrogatory.

21. To the twenty-first interrogatory he says—I cannot tell what the said premises could have been sold for, at the date of the auction sale of the Essex Company in 1846, but they were worth much more than they were before said company commenced said canal, and this was owing to the improvements of said company. The population of that part of Methuen which is now Lawrence could not have been more than a hundred and fifty before said Essex Company located their works thereon. It is now about eight thousand. I have already stated the present value of a clear title to said premises, and to what the difference is owing.

Answers to the Interrogatories to J. W. Carleton, separately.

1. To the first interrogatory he says—I am one of the selectmen of the town of Methuen, and there is in my custody, as one of said board, a record of licenses granted to auctioneers by the selectmen of the said town for the years 1842 and 1843. I produce herewith the said record, and there is not any evidence in said record that Stephen Barker, of Methuen, was licensed as an auctioneer by said town or its officers for said years or either of them.

2. To the second interrogatory he says—There is in the custody of said board of selectmen, the record of the valuation of estate, real and personal, in said Methuen, and of the persons to whom the same were assessed in the years 1843 and 1844. I herewith produce said record. There was real and personal estate assessed to said Durant in said years. I herewith copy, in the master's presence, the part of said records relating to said inquiries and annex it to my answer. The valuation appears in the said copy.

3. To the third interrogatory he says—I did not attend the said sale. I remember to have seen an advertisement similar to that now shown to me. It was posted in my store in Methuen by Mr. Durant; I can't

say precisely how long before the sale, but I should think not many days. I do not remember to have seen but one.

Answers to such of the interrogatories addressed to John Tenney, separately, as the said Carleton is desired to answer.

6. To the sixth of the said interrogatories he says—As I have before stated, the said Durant posted up an advertisement, similar to that now shown to me, in my store not many days before the sale, and I do not remember to have seen any other.

7. To the seventh of the said interrogatories he says—He showed me the advertisement, and we had then and there the conversation which I have narrated in my answer to the tenth interrogatory, and which contains all that I now recollect thereof.

8. To the eighth of the said interrogatories he says—I have answered this interrogatory in my answer to the tenth interrogatory above mentioned.

9. To the ninth of the said interrogatories he says—I have no recollection of Mr. Durant's ever having made any such communication to me.

10. To the tenth of the said interrogatories he says—I have no definite recollection of Mr. Durant's ever having made any such communication to me.

Answers to the Cross-interrogatories.

1. To the first cross-interrogatory he says—I was absent in the western country on business during most of the time embraced by the transactions stated in this interrogatory, and I cannot answer the same of my own personal knowledge.

2. To the second cross-interrogatory he says—I do not know, of my own knowledge, what title Mr. Durant could have given, or what incumbrances were upon his property.

3. To the third cross-interrogatory he says—Before I went to the west I heard that Saunders and Nesmith were taking bonds of land, for the purpose of establishing a water-power manufacture somewhere on the Merrimac river, either in Methuen, or in Andover, opposite Methuen. Before my return the Essex Company was formed.

4. To the fourth cross-interrogatory he says—I know not.

5. To the fifth cross-interrogatory he says—I have not been particularly conversant with the value or the sales and purchases of paper-mill property. The remainder of this interrogatory I am not able to answer.

6. To the sixth cross-interrogatory he says—I have no particular knowledge as to the matters inquired of in this interrogatory. I spoke only from a general knowledge of Mr. Durant's pecuniary condition. In a community like ours, the pecuniary condition of every man of business is more or less known, especially to those who manage banks where their paper is offered for discount, as was the case with Mr. Durant's paper in the banks where I have been a director.

7. To the seventh cross-interrogatory he says—It was a matter of general notoriety that Mr. Durant's credit was not good. I have often heard persons say that they had demands against him which they could not collect. My impression is strong that his paper sometimes lay over at the bank, but I am not able to specify any particular instances, or to answer this interrogatory any further than I have already done.

8. To the eighth cross-interrogatory he says—I know not.

9. To the ninth cross-interrogatory he says—I do not remember that he made any such application to me.

10. To the tenth cross-interrogatory he says—I bought the said piece of land, mentioned in my answer to the 13th direct interrogatory, of the Essex Company. I do not recollect the exact time, but I think it was in 1847 or 1848. I gave a little over three cents a foot. I still own it.

11. To the eleventh cross-interrogatory he says—He did not at such conversation make any such statement as is inquired of herein. I do not remember to have had any other conversation with him upon the subject.

Answers to the Cross-interrogatories to J. W. Carleton, separately.

1. To the first cross-interrogatory he says—The licensed auctioneers in said Methuen, in 1842, were John Low, and in 1843 Wm. S. Annis.

2. To the second cross-interrogatory he says—Mr. Barker was licensed as an auctioneer in 1832, 1834, 1836, 1837, 1838, 1844, 1846.

3. To the third cross-interrogatory he says—I know not.

J. W. CARLETON.

[Paper annexed to the deposition of J. W. Carleton, and forming part thereof.

GEO. S. HILLARD, *Commissioner*.]

A copy of the estate assessed to Adolphus Durant in the town of Methuen for the year 1843, (viz.:) 4 houses, 2 barns, 2 paper-mills, 3 out-buildings, 52 acres of land. True value, $8,000. Personal estate, 7 horses, 2 cows, 4 swine, machinery and stock. True value, $1,200.

A copy of the estate assessed to Adolphus Durant in the town of Methuen for the year 1844, (viz.:) 4 houses, 2 barns, 3 out-buildings, 2 paper-mills and fifty-two acres land. True value, $7,000. Personal estate, 5 horses, 2 cows, 1 swine, stock in trade and machinery, $586.

J. W. CARLETON.

UNITED STATES OF AMERICA,

District of Massachusetts, ss.—City of Boston.

On the nineteenth, the twenty-third, the twenty-fourth, and the twenty-fifth days of March, A. D. 1852, the aforesaid witnesses, John Tenney, and J. W. Carleton, came severally before me, and each witness, while present before me, I examined carefully on oath touch-

ing the premises, and in reply to the interrogatories hereto annexed, and the examination of each witness, when taken, was reduced to writing by me, and subscribed by him in my presence. These depositions are taken by virtue of the commission hereto annexed, proceeding from the circuit court of the United States, within and for the Massachusetts district, and to be used in the cause therein mentioned; and all the directions contained in the said commission were carefully observed by me in executing the same.

GEO. S. HILLARD, *Commissioner.*

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss.*

TO CHARLES LEVI WOODBURY, OR GEORGE S. HILLARD, *of Boston, esquires, U. S. Commissioners for the district aforesaid.*

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Joseph Foster, of Newton, and George Rogers, of Boston, witnesses to be examined on behalf of the respondents, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is complainant in equity versus Samuel Lawrence and al., respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this fifth day of April, in the year of our Lord one thousand eight hundred and fifty-two.

ISAAC O. BARNES, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other

persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answers of the deponents to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories in behalf of the Defendants, to Joseph Foster, of Newton, in said district.

1. What is your name, age, residence, and occupation, and how long have you followed such occupation?

2. If you say you are a paper-maker by trade, state how many years you have followed the said trade, whether you have at any time or times owned or controlled any mills for making paper; if so, when, and how many, and what such establishments have you owned, controlled, or had charge of?

3. Do you know the parties to the above suit, any, or either of them?

4. If you say you know said Durant, state how long you have known him. Were you ever engaged in the business of paper-making in partnership with said Durant and Seth Dewing, of Newton; if yea, when did said partnership commence, and where did the firm carry on said business? Who had charge of the paper factory or mills, and superintended the making of the paper? Has said partnership been dissolved; if yea, how long did the said partnership continue, and when was it dissolved, and why? At its dissolution was said Durant indebted to the other members of the firm, or were they indebted to said Durant? Whether, or not, was the state of accounts between yourself and said Dewing and said Durant submitted to the decision of referees; if yea, who were they? If any award was made by said referees, state in whose favor was the same made, and for what amount, and is said award in your possession; if yea, annex the same or a true copy; if not, state where the same is now, if you know?

5. Declare whether, or not, during the years 1842 and thence to Oct. 20th, 1843, you were acquainted with the pecuniary condition of said Durant? If yea, state whether, or not, at such time the said Durant was or was not possessed of sufficient property to pay his just debts, and [whether or not, at any and what time during said period, you had any reason to believe or apprehend said Durant intended to take the benefit of the United States Bankrupt act or the insolvent law of Massachusetts? State what your grounds of belief or apprehensions were,] or whether, or not, the said Durant ever intimated to you, and if so, whether verbally or in writing, such intention, and if in writing,

by letter, or otherwise, annex such letter or other written communication or a true copy, if the same is in your possession; and if not in your possession, state where the same is or are, and where you last saw the same?

[The plaintiff objects to the portion of this interrogatory enclosed in brackets, as seeking to introduce impertinent testimony.]

6. Declare whether, or not, the said Durant did—if yea, when—apply for the benefit of the insolvent laws of Massachusetts, and to whom, and when you were informed of his said application, and whether you proved any debts against him, and for what amount, and whether, or not, you know that he applied for a certificate of discharge from his debts, and to whom, and if you opposed the same or not, and when, and if you opposed it, [declare on what grounds such opposition] was presented?

[Plaintiff objects to the part in brackets as impertinent and illegal.]

7. If one ground of such opposition was your declared belief that he had concealed property in fraud of said laws, declare whether you did, or did not, allege such cause in writing to the master in chancery? If yea, where is the said writing, if you know, and what was the property, and to whom conveyed, or how else disposed of, in which you founded said charge?

[The plaintiff objects to the part contained in brackets as leading and otherwise illegal.]

8. If you refer to real estate as conveyed to one Jesse Sargent, please to examine the deed now shown to you by the master, viz: a certified copy of a deed from said Durant to Jesse Sargent, dated March 29, 1843, and read the description of lands and buildings given in said deed, and state whether the original of said deed was, or not, the conveyance of real estate, relied on by you as having been made for the purpose of a fraudulent concealment of the property therein described, or how otherwise?

[The plaintiff objects to this interrogatory as leading and otherwise illegal.]

9. Examine the printed advertisement now shown to you by the master, dated Sept. 1, and purporting to be an advertisement by Jesse Sargent, of certain property formerly belonging to said Durant, for sale at public auction, and state whether you do not recognise the same? If yea, state whether it was ever previously in your possession; if yea, when, where, and from whom, and under what circumstances did you first receive it; fix the date as nearly as you can and state the circumstances particularly, and whether it was before or after you knew or heard that such sale had taken place or was about to take place, and how long before or after, and whether you did, or did not know or hear that a sale took place pursuant thereto, or was about to take place, and if yea, when did you know or hear thereof, before said sale took place or after, and how long before or after and from whom you heard it. Declare whether the property therein mentioned is or is not the same mentioned in said deed from Durant to Sargent?

10. Declare whether the master, before whom said Durant's case was pending, granted or refused the discharge prayed for? If you say it was refused, declare why he refused it, if you know?

[The plaintiff objects to this interrogatory as seeking to introduce illegal testimony.]

11. Declare whether, or not, said Durant appealed from such decision to the Supreme Court, and whether any hearing was had upon his appeal, and before whom, and where, and whether you did not oppose his said application and appeal, and whether, or not, you were present at said hearing, and whether, or not, said Durant was present; and whether, or not, said Stephen Barker was present? Who appeared for you as counsel? Whether, or not, said Durant was examined on oath at said hearing by the judge, or any other, and what other person, touching any disposition made by him of his property, or any part thereof, prior to his said petition to be declared insolvent? If yea, state what questions were asked him, that you recollect, by said judge, or other person, and what reply he made, and whether or not, if anything, what, respecting said deed to said Sargent? State all he said relating to said deed, or any bond or other writing between said Sargent and himself or either of them, as nearly as you can recollect it. State whether the court, upon such appeal, ordered the master to grant said Durant a certificate of discharge, or refused so to do?

12. Who was appointed or acted as Durant's assignee upon his said petition to be declared insolvent, if you know?

13. Declare whether, or not, said assignee sold at public auction all said Durant's right, at the date of said petition, in the property described in the deed to said Sargent?

14. If you say said assignee did sell the same, declare the time and place of such sale, and whether you were present, and state who acted as auctioneer, if you say you were present; whether, or no, the said Barker was present at said sale; and whether, or no, any notice was given to the company there assembled, or to the auctioneer in the hearing of said company by any person, and whom, to the effect of forbidding the auctioneer to proceed in said sale, or of cautioning all persons present against buying or bidding upon the said property, or respecting any right, interest or claim of said Barker, therein or otherwise, concerning the business of the said auction?—if yea, state particularly what the said notice was, and by whom given? Did, or did not the said Barker address any order, direction or remark to the auctioneer, in the hearing of the company, respecting the business of said auction?—if yea, declare what it was, and whether or not, was said Durant present, and his brother, James Durant?—If yea, state where said Durant stood, and where his brother stood? Who bid for the property? Give the names of all who bid for the same?

15. If you say you bid, what was your first bid, and whether, or not, did any person bid over you, and if any, who was it?

16. If you say said James Durant bid on you, declare how many and what bids you made, and how many, and what bids he made, and to whom the property was struck off, and for what price?

17. Declare whether said James Durant was, or was not, then possessed of any, or what property? State how much he was worth? If said Adolphus Durant did or said anything to his said brother before or while said bidding was going on, declare particularly what you saw him do or heard him say, and who else saw or heard it beside yourself?

18. If you shall have stated that said property was struck off to you, and the price, declare whether, or not, you signed any memorandum of sale?—if yea, when, and where did you do so? Examine the paper now shown you by the master, and the signature, and declare whether you do, or not, recognise it as being a paper signed by yourself at said sale, and the memorandum of sale above mentioned?

19. Declare whether, or not, you paid to said assignee the amount of your said bid, and whether, or not, said assignee thereupon executed and delivered a deed of said property, and if so, when, and where, and examine the deed now shown to you, dated
and the signature of the grantor and the names of the witnesses, and declare whether it is, or is not the deed so executed and delivered to you by said assignee?

20. Declare whether, or not, and if yea, when, to whom, and for what consideration you sold and conveyed said property?

21. If you say you sold and conveyed the same to one Robert Farley, examine the deed now shown to you by the master, and the signature, and state whether it is or is not said conveyance from you to said Farley?

22. Declare, whether, or not, you are acquainted with said premises described in said deed from Durant to Sargent, and the mills, machinery, and water privileges connected therewith? How long have you been so? How often have you seen or been in or upon the same?

23. Declare whether you are, or are not, acquainted with the value of similar mill property and machinery and water-power? State what opportunities you have had for becoming acquainted therewith?

24. Declare what, at the time of said assignee's sale, and at the time of said deed to Sargent, you considered the value of said property to be, free of all incumbrances?

W. H. GARDINER,
By C. G. RIPLEY, *for Deft.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Cross-interrogatories in behalf of the Plaintiff, to Joseph Foster.

[The plaintiff objects to any statement by the witness, in answer to defendant's interrogatory, of the contents of any record or instrument in writing.]

1. Have you, or not, had quarrels, disputes, and lawsuits with the said Durant?

2. For how many years have you been engaged in lawsuits against him?

3. How many lawsuits are you now engaged in against him, directly or indirectly?

4. Have you not used threats against the said Durant?

5. Have you not threatened him with violence?

6. Have you sworn to be revenged upon him for some cause or other?

7. Did you endeavor to dissuade or prevent Miss Abigail Durant from assigning a certain mortgage she held upon said Durant's property in Methuen, to the Essex Company, or to their agent?

8. *De bene esse.* If you say, in answer to the defendant's 10th direct interrogatory, that the discharge of said Durant was refused by the master, say whether there was any hearing before the master, and whether you were present all the time; be particular and say what witnesses were examined, and whether said Durant was examined, and if so, by whom, and to what said witnesses each testified, and whether the master delivered any opinion, and if so, state accurately what it was?

9. Did any creditor but yourself and partner, Dewing, oppose the discharge of said Durant?

10. Have you conversed with any one, and with whom, relative to the testimony you were to give in this case?

11. If, in answer to the 17th direct interrogatory, you say that James Durant was, or was not, possessed of any property, state how you know that he was, or was not, possessed of property.

12. If, in answer to the 22d interrogatory, you say that you are acquainted with the value of property similar to the said Durant's, be particular, describe all the property similar thereto with which you are acquainted, and name the owners and the value of each parcel thereof.

13. Are you personally acquainted with the manufacturing of the kinds of paper manufactured at the said Durant's mills? Do you yourself make similar paper, or different, and out of what do you make your paper?

14. Is not the paper you have been personally conversant with the manufacturing of, made from old junk and clay, principally used by book binders; and do you, or not, use therefor a Fourdrinier machine?

15. Are you, or not, acquainted with the operation and cost of such machinery as was used by said Durant? Does, or not, such machinery as was used by said Durant, deteriorate on being allowed to stand without use, or being removed from the factory, and kept stored for one or more years?

16. If, in answer to the defendant's interrogatories, you have said that you were a partner with said Durant, in the manufacturing of paper at Methuen, state where you resided at said time, and how far from Methuen; whether, or not, you were at said time conducting pasteboard mills at Newton; and whether you personally attended to the manufacturing in the Durant mills, in Methuen, or had any, and

if any, what charge of the business done by the firm of which you were a member, so far as regards the manufacturing of paper?

17. If, in answer to the defendant's 4th interrogatory, you said that you were ever in copartnership with said Durant, say whether, or not, you had any written articles of copartnership with him; and if yea, annex the same, or a true copy thereof, to your answer; if you say that you have lost or mislaid them, say when you last saw them, and state their contents, particularly what you were to pay said Durant for the upper mill if he conveyed it to your firm.

18. If, in answer to the 4th direct interrogatory, you say that said Durant was indebted to yourself and said Dewing, state whether, or not, said fact was disputed by said Durant, or whether he admitted it.

19. If, in answer to the 5th direct interrogatory, you say, that in 1842 and 1843 the said Durant was not possessed of sufficient property to pay his debts, state what debts he owed besides the one which was in dispute with you, and how you know that he could not pay them. Do you know that all his debts, except the said one claimed by you, were not paid, and what your means of knowledge are?

20. If, in answer to the 4th direct interrogatory, you annex or refer to any award, please say whether the same was not published several weeks after the 27th April, 1843, when the same is dated?

21. Upon said arbitration, and up to the time of the decision of the arbitrators, did not said Durant claim that a large balance was due him upon a just and fair settlement of the accounts, and has he not always asserted that the award was erroneous?

22. Did the controversy between you and said Durant, which ended in arbitration, begin before the October term, 1841, of the supreme court for Middlesex? If so, from that time to the present, has there not been a quarrel or alteration of good feeling between you and said Durant, and have you, from that time, had any business transactions, or bought and sold anything of or to him? If so, state each transaction and its date carefully?

23. If, in answer to defendant's 5th interrogatory, you have stated the pecuniary condition of said Durant in 1842 and 1843, state every fact known to you personally, showing what his debts were, giving names and dates, and of what his property consisted, describing the same, and what your means of knowledge in regard to the same are, whether merely from hearsay or not, and whether you can state, and have stated, of your own knowledge, all the property and notes, and bills receivable of said Durant during said period, or any part thereof; and if so, how you know the facts?

24. *De bene esse*. Did not the master in chancery expressly say, when the parties came to the hearing on said Durant's application for a discharge, and without hearing any witnesses, that it was unnecessary to proceed to a hearing, as each party intended to appeal, and did he not thereupon enter his decree without further hearing?

25. If, in answer to the 17th cross-interrogatory, you have stated that your firm was, by your articles of copartnership, to pay said Du-

rant a certain sum of money if he conveyed said upper mill to your firm, state whether the said Durant did not afterwards expend large sums of money upon said mill and machinery; and what additions, if any, he made thereto, or to the machinery thereof?

26. Have you not aided and assisted in getting up the evidence in this case for defendant; have you not seen and conversed with the witnesses? Have you not made a journey to Lawrence to see one or more of said witnesses? Were you not there for said purpose on Sunday, the 31st August, 1851, and have you not been in Lawrence since, on the same business—since said Sunday, and how often?

SIDNEY BARTLETT,
By ED. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al. } In Equity.

Interrogatories to George Rogers, of Boston, in said district, on behalf of the defendants in said cause.

1. What is your name, age, residence, and occupation?

2. Do you know the parties to the above cause, and how long have you known them, or any of them?

3. What was your residence and occupation in the years 1842 and 1843, and how long prior thereto had you been in such occupation; were you or not conversant with accounts and book-keeping, mercantile and other?

4. Whether or not you are acquainted with the existence, in the year 1842 and 1843, of a controversy between said Durant, Joseph Foster, and Seth Dewing, and what was the cause and nature thereof, if you know; whether or not the said controversy and dispute was submitted to the decision of referees; if so, when and who were they; whether or not the said referees employed you to audit the accounts between the said parties, and, if so, when? Did you or not perform the said duty? If yea, state if you can the result at which you arrived; if anything was found to be due from said Durant to said Foster & Dewing, or from them to him, state what was the amount of such indebtedness. If you have in your possession a copy of the account between said parties as then found by you to be correct, please annex the same or a true copy to your answer.

5. Declare whether or not you submitted the accounts or the state thereof to said parties, and, if so, whether before or after making your report thereof to the referees, and for what purpose. If you have stated that you submitted said accounts or the state thereof to said parties,

state when you submitted the same to said Durant, and at what place you did so, and who was present; fix the date as nearly as you can; whether or not the said Durant then personally examined the same or was made aware of the result of the same. [State when you communicated the result of your investigations to said referees, and whether or not the said referees adopted the same as a correct statement of the state of accounts between the said parties.] [Declare if you know whether or not the said referees awarded any and what sum as due from said Durant to said Foster & Dewing, and whether the same was more or less than the amount shown by the accounts as stated by you, and if less, state why, if you know said referees awarded a less sum.] How long before the publication by said referees of said award did said Durant know or become informed of the sum upon which said referees had fixed; state the time, if you know it, as particularly as you can.

[Plaintiff objects to the part included in brackets as calling for impertinent testimony.]

[The plaintiff objects to the part in brackets as calls for improper testimony.]

W. H. GARDINER,
By C. G. RIPLEY, *for Defts.*

[The plaintiff objects to so much of each of the foregoing interrogatories as calls for the statement of the contents of written documents.]

S. BARTLETT,
By E. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & al.

Cross-interrogatories in Plaintiff's behalf, to George Rogers.

1. If in answer to the 5th interrogatory you say that you submitted the accounts therein inquired about to the said Durant, or made him aware of the result of the same, please state whether the said Durant did not thereupon deny the correctness of said account, and whether he did not deny that he was indebted at all to said Foster & Dewing, and claim that a balance was due to him from said Foster & Dewing, or from their firm. Did he not claim that items to his credit had been omitted, and that items to his debt had been added erroneously, and to large amounts?

S. BARTLETT,
By E. D. SOHIER.

A true copy—attest:

ISAAC O. BARNES, *Clerk.*

Answers of Joseph Foster to the Interrogatories hereto annexed on the part of the Respondents.

1. To the first interrogatory he says—My name is Joseph Foster; I am sixty-one years old; I reside in Newton Lower Falls; I am engaged in the manufacture of paper; I have been for thirty-five years engaged in that business.

2. To the second interrogatory he says—I have been a manufacturer of paper for thirty-five years; I have owned and carried on a paper-mill at Newton Lower Falls during that period; I was a partner with Adolphus Durant and Seth Dewing in the same business for about a year in Methuen.

3. To the third interrogatory he says—I know Mr. Durant, but not Mr. Lawrence.

4. To the fourth interrogatory he says—I have known Mr. Durant for upwards of forty years. I have been engaged in the business of paper-making in partnership with him and Seth Dewing, of Needham. This partnership commenced April 1, 1836, and the business was carried on at Methuen. Mr. Durant had charge of the paper-mills and superintended the making of the paper. The said partnership has been dissolved. It continued between thirteen and fourteen months, and was dissolved in May, 1837. Mr. Dewing and I found that Mr. Durant had got things into so bad a state that we were compelled to dissolve. At its dissolution, Durant was indebted to the other members of the firm. The state of accounts between Dewing and myself and Durant was submitted to the decision of referees. These were Judge Merrill, Deacon Moses Grant, and Edmund Tileston. The award of the referees was made in favor of Joseph Foster and Seth Dewing, for five thousand nine hundred and ninety-five or six dollars and some cents. The said award has been in my possession, and is now in the office of the clerk of one of the courts in the county of Essex. I put it in suit against Mr. Durant.

5. To the fifth interrogatory he says—During the years 1842, and thence to October 20, 1843, I was acquainted with the pecuniary condition of said Durant. In my opinion the said Durant was not possessed of sufficient property, during that time, to pay his just debts. I did not, at any time during said period, have reason to believe or apprehend that said Durant intended to take the benefit of the United States bankrupt act, or the insolvent law of Massachusetts; and he never intimated to me any such intention by writing or otherwise.

6. To the sixth interrogatory he says—The said Durant did apply for the benefit of the insolvent law of Massachusetts, some time in the year 1843. He applied to J. H. Duncan, esq. I was not informed of his application till January or February, 1844. I proved a debt against him for the amount of the award hereinbefore mentioned. He applied for a certificate of discharge to J. H. Duncan, esq., on the 17th day of February, 1844, and I opposed it. My ground was that he had property concealed by the way of sales made a short time previous to his applying for a discharge.

7. To the seventh interrogatory he says—I did allege such cause in writing to the master in chancery. I do not know where the said writing now is. The property I had reference to was his mill and house, or rather all his real estate, conveyed, as I understood, to Jesse Sargent and a Mr. Barker, or by Mr. Sargent to Mr. Barker.

8. To the eighth interrogatory he says—I have examined the deed now shown to me by the master, being a certified copy of a deed from said Durant to Jesse Sargent, dated March 29, 1843, and read the description of lands and buildings in said deed. The original of said deed was the conveyance of real estate, among others, relied on by me as having been made for the purpose of the fraudulent concealment of the property. There was other real estate, besides that mentioned in this deed, which I had reference to.

9. To the ninth interrogatory he says—I have examined the printed advertisement now shown to me by the master, dated Sept. 1st, and purporting to be an advertisement by Jesse Sargent of certain property, formerly belonging to said Durant, for sale at public auction, and I do recognise the same. This advertisement was previously in my possession. It came into my possession on the Tuesday or Wednesday after the sale. I found it inside of a letter left at Stone & Norton's for me, and brought out by my teamster. The advertisement was not enclosed, but appeared to have been stuck in between the folds. This was the first time that I had ever heard of the sale, or that there was going to be one, and the sale had already taken place, as it appeared. The property mentioned therein is the same mentioned in the deed from Durant to Sargent.

10. To the tenth interrogatory he says—The said master refused a discharge to Durant on the ground of the objections filed by me in writing, before mentioned.

11. To the eleventh interrogatory he says—The said Durant did appeal from such decision to the supreme court, and a hearing was had before Judge Wilde in a room in the court-house in Boston, upon his appeal; I opposed his application and appeal, and was present at the hearing. The said Durant was present, and I think Stephen Barker was also. Mr. N. W. Hazen appeared for me as counsel. The said Durant was examined on oath at the said hearing by the judge, touching the deposition made by him of his property, prior to his said petition. The judge asked him if he calculated to pay his debts when he made that deed to Jesse Sargent, and other conveyances. His reply was, that if Congress made a tariff, as they ought to do, he calculated to pay those which he ought to pay. That was all that he said. The court refused to order the master to give him a discharge.

12. To the twelfth interrogatory he says—Mr. Jacob How was the assignee of the said Durant.

13. To the thirteenth interrogatory he says—I answer this question in the affirmative.

14. To the fourteenth interrogatory he says—The said sale was in May or June, 1844, in Durant's mill in Methuen. Mr. Jacob How

acted as auctioneer. I was present. The said Barker was present, I think. There was, to my knowledge, no notice given to the company, or to the auctioneer in the hearing of the company by any person, to the effect of forbidding the auctioneer to proceed in said sale, or of cautioning all persons present against buying or bidding upon the said property, or respecting any right, interest or claim of said Barker therein, or otherwise, concerning the business of the said auction. The said Barker did not, to my recollection, address any order, direction or remark to the auctioneer in the hearing of the company, respecting the business of said auction. The said Durant was present, and his brother, James Durant. The said Durant and his brother, James Durant, stood together near the auctioneer and opposite to him. I bid for the property first, and James Durant made the second bid, and so on till I bid it off. No other person bid.

15. To the fifteenth interrogatory he says—I think my first bid was but ten dollars. James Durant bid five dollars over me.

16. To the sixteenth interrogatory he says—I made several bids, usually putting on twenty-five or fifty dollars, and James Durant invariably bid five dollars over me. I cannot say how many bids I made, probably nine or ten. I bid five hundred dollars. James Durant bid five hundred and five dollars, and I then bid six hundred dollars, and at that price the estate was knocked off to me.

17. To the seventeenth interrogatory he says—I did not consider James Durant to be worth any property at that time. When I bid six hundred dollars the said Adolphus Durant clenched hold of his brother James and told him not to bid any more. I think all the company must have seen and heard it, as Mr. William Perkins, who was then present, spoke to me about it afterwards.

18. To the eighteenth interrogatory he says—I did sign a memorandum of sale on the spot, immediately after the sale. I have examined the paper now shown to me by the master, and the signature, and I recognise it as being a paper signed by myself at said sale, and the memorandum of sale above mentioned.

19. To the nineteenth interrogatory he says—I paid to the assignee the amount of my bid, and he thereupon executed and delivered a deed of said property. The deed was delivered in Mr. Duncan's office in Haverhill. I cannot recollect the time, but it was some time after the sale, during the next spring. I have examined the deed now shown to me, dated June 1, 1844, and the signature of the grantor, and the names of the witnesses, and the same is a copy of the deed so executed and delivered to me by said assignee.

20. To the twentieth interrogatory he says—I sold the said property to Robert Farley, for twenty-five hundred dollars, in March or April, 1845.

21. To the twenty-first interrogatory he says—I have examined the deed now shown to me by the master, and the signature, and it is the conveyance from me to said Farley.

22. To the twenty-second interrogatory he says—I am acquainted

with the premises described in said deed from Durant to Sargent, and the mills, machinery, and water privileges connected therewith. I have known them about twenty years. I have been there at twenty or thirty different times.

23. To the twenty-third interrogatory he says—I am acquainted with the value of similar mill property and machinery and water-power. I have been in the use of such property all my lifetime.

24. To the twenty-fourth interrogatory he says—The value of the said premises and machinery was about fourteen or fifteen thousand dollars at the dates of the assignee's sale and of the deed to Sargent. This estimate does not include the Fourdrinier machine, which did not belong to Durant.

Answers to the Cross-interrogatories.

1. To the first cross-interrogatory he says—I have had no quarrel with the said Durant; I had a difference with him, which was referred to referees.

2. To the second cross-interrogatory he says—I have never had but one suit with him, and that was about ten years ago.

3. To the third cross-interrogatory he says—I have a suit pending against him, his wife, and another person, to recover possession of a piece of land attached by me, in the suit above mentioned, on which judgment was recovered. This suit is now prosecuted by my assignee.

4. To the fourth cross-interrogatory he says—I have not used threats against the said Durant.

5. To the fifth cross-interrogatory he says—I have not.

6. To the sixth cross-interrogatory he says—I have not.

7. To the seventh cross-interrogatory he says—I did not endeavor so to dissuade or prevent her. I never knew anything about the said assignment till it was made.

8. To the eighth cross-interrogatory he says—There was no examination or investigation before the master, but the inquiry was by him transferred to the supreme court without any hearing.

9. To the ninth cross-interrogatory he says—No one opposed his discharge but myself.

10. To the tenth cross-interrogatory he says—I have not conversed with anybody except the counsel for the respondents.

11. To the eleventh cross interrogatory he says—The said James Durant once lived in my neighberhood and did not pay his small bills. He was a man of large family, and worked on common wages.

12. To the twelfth cross-interrogatory he says—I know my own paper-mill, which I think is now worth from fifteen to eighteen thousand dollars. I know a paper-mill on the dam opposite to me, which belongs to Allen A. C. Curtis & Sons, which is worth from eighteen to twenty thousand dollars. I know Rice & Gaffield's mill at Newton Lower Falls, which is worth fifteen or sixteen thousand dollars.

13. To the thirteenth cross-interrogatory he says—I am acquainted

with the manufacturing of the kinds of paper manufactured at the said Durant's mills. I make a different paper myself.

14. To the fourteenth cross-interrogatory he says—Of late years I have made bookbinder's board, made of junk, and into which clay is put. I do not use a Fourdrinier machine for this. But I have made printing paper, such as Durant makes.

15. To the fifteenth cross-interrogatory he says—I am acquainted with the operation and cost of such machinery as was used by said Durant. I bought the Fourdrinier machine used by him, but which he never owned. Such machinery as was used by him does deteriorate on being allowed to stand without use, or being removed from the factory and kept stored for one or more years.

16. To the sixteenth cross-interrogatory he says—I resided at Newton at that time, about thirty miles from Methuen, and was conducting pasteboard mills at Newton. I did not personally attend to the manufacturing in the Durant mills in Methuen, and had no charge of the business there. My partner, Mr. Dewing, did that.

17. To the seventeenth cross-interrogatory he says—There were written articles of copartnership, but I never had them in my possession, and I do not know where they are. I think I have not seen them since they were executed. I don't recollect whether we were to pay Durant anything for the upper mill. All I remember was, that Durant was to be allowed a rent of twelve hundred dollars, (I think,) if the concern made money, otherwise not.

18. To the eighteenth cross-interrogatory he says—He disputed the fact, or at least the amount claimed.

19. To the nineteenth cross-interrogatory he says—The said Durant owed R. G. Shaw & Co. a debt of a thousand dollars, with interest for some years, in those years. I know that he could not pay, because he could not pay my claim.

20. To the twentieth cross-interrogatory he says—I know not.

21. To the twenty-first cross-interrogatory he says—The said Durant never claimed, to my knowledge, that a large balance was due him on a just and fair settlement. I do not know that he has asserted that the award was erroneous.

22. To the twenty-second cross-interrogatory he says—My controversy with the said Durant, which ended in arbitration, began about ten years ago, but I cannot give the date exactly. Since that time there has been a coldness between me and the said Durant, and I have had no business transactions with him since that time.

23. To the twenty-third cross-interrogatory he says—I know the said Durant's debts to me and Mr. Dewing, and to R. G. Shaw & Co., as hereinbefore mentioned, as having been due in 1842 and 1843. As to his property, I cannot state anything in particular of my own knowledge. I knew that his real estate and mill property at Methuen was mortgaged to nearly its full value. As to the amount of his personal property and notes receivable in these years, I cannot say.

24. To the twenty-fourth cross-interrogatory he says—The master did say so substantially.

25. To the twenty-fifth cross-interrogatory he says—The said Durant did not expend large sums of money upon said mill and machinery, or make any additions thereto, to my knowledge.

26. To the twenty-sixth cross-interrogatory he says—I have not aided or assisted in getting up the evidence in this case, nor conversed with any of the witnesses thereupon; nor have I ever been to Lawrence on business connected with the case. It is for my interest that said Durant should prevail in his suit. JOSEPH FOSTER.

Answers of George Rogers to the Interrogatories hereto annexed on the part of the Respondents.

1. To the first interrogatory he says—My name is George Rogers; I am fifty-nine years old; I reside in Boston, and am a merchant.

2. To the second interrogatory he says—I know Mr. Durant and Mr. Lawrence.

3. To the third interrogatory he says—I resided in Boston in 1842 and 1843. I was the confidential clerk and book-keeper of the late Judge Hubbard, and had been engaged in that relation, wholly or partially, for the previous ten years. I was conversant with accounts and book-keeping, mercantile and other.

4. To the fourth interrogatory he says—I am acquainted with the existence, in the years 1842 and 1843, of a controversy between said Durant, Joseph Foster, and Seth Dewing. It was in relation to their partnership accounts; the three having been partners in paper-making. This controversy was submitted to referees. These were Judge Merrill, Edmund P. Tileston, and Moses Grant. The said referees employed me to audit the accounts between the parties, and I did audit them. I was occupied in the work about nine months, ending in April, 1843. Under the instructions of the referees, I found that Durant was indebted to the company in the sum of thirteen thousand three hundred and eighty-four dollars and fifty-seven cents. Joseph Foster owed the company fifteen hundred and seventy dollars and eighty-two cents; and the company owed Seth Dewing thirteen thousand, four hundred and eighty-four dollars and thirty-six cents. I have not in my possession a copy of the account as I made it up. If I can get a copy I will annex it. The above amounts are taken from a memorandum in my possession, and I believe them to be correct.

The copies of the accounts are hereto annexed, marked B, D, F.

5. To the fifth interrogatory he says—I submitted my accounts to the parties before making my report to the referees, so far as they were made up, and afterwards in the presence of the referees, when all the parties were together. They were submitted to the parties that they might understand them and make exceptions, and assent to what was agreed upon. I submitted my account to the said Durant at Andover, at the office of N. W. Hazen, esq., and in his presence, March 23 or

24, 1843. The said Durant examined the accounts and asked explanations, and I gave them; and I am confident that he was made aware of the result then arrived at. I communicated the result of my investigations to the referees, March 31, 1843, and the said referees adopted the same as a correct statement of the accounts between the said parties. The referees awarded a sum as due from Durant to Foster and Dewing which was less than the amount shown by the accounts as stated by me, but what the amount was I do not know. From what I heard Judge Merrill say, I presume that this arose from the fact that there was certain equitable considerations in the case which they deemed to be in favor of Mr. Durant. I do not know how long before the publication of the award it was, that Mr. Durant knew of the sum awarded.

Answer to the Cross-interrogatory.

I think that the said Durant did deny the correctness of the said account. I have no recollection that he denied at that time that he was indebted at all to the said Foster and Dewing, or claimed that a balance was due from them to him. I think that he objected to some of the items against him, and also contended that items to his credit were omitted. I do not think it was a large amount. He also claimed an allowance for services.

GEO. ROGERS.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.—City of Boston.

On the twenty-first, the twenty-second, and the twenty-fourth days of April, A. D. 1852, the aforesaid deponents, Joseph Foster and George Rogers, came before me, and I then carefully examined them on oath touching the premises, and in reply to the interrogatories hereto annexed; and the examination of each deponent, so taken, was reduced to writing by me, and by the said deponent subscribed in my presence. These depositions are taken by the virtue of the commission hereto annexed, and in reply to the interrogatories thereto annexed; and all the directions contained in the said commission were carefully observed by me in executing the same.

GEO. S. HILLARD, *Commissioner.*

U. S. CIRCUIT COURT.

DURANT
vs.
LAWRENCE & al.

It is agreed that the accounts annexed to Geo. Rogers's deposition need not be printed, it being understood that the plaintiff does not hereafter print any other accounts not already put into the case, which might be used as contradicting or impeaching the said accounts, and both parties to be at liberty to refer to said accounts at the hearing, as if they had been printed.

C. G. RIPLEY, *for Defts.*
Oct. 1, 1852. S. BARTLETT, *for Pltffs.*

24. To the twenty-fourth cross-interrogatory he says—The master did say so substantially.

25. To the twenty-fifth cross-interrogatory he says—The said Durant did not expend large sums of money upon said mill and machinery, or make any additions thereto, to my knowledge.

26. To the twenty-sixth cross-interrogatory he says—I have not aided or assisted in getting up the evidence in this case, nor conversed with any of the witnesses thereupon; nor have I ever been to Lawrence on business connected with the case. It is for my interest that said Durant should prevail in his suit. JOSEPH FOSTER.

Answers of George Rogers to the Interrogatories hereto annexed on the part of the Respondents.

1. To the first interrogatory he says—My name is George Rogers; I am fifty-nine years old; I reside in Boston, and am a merchant.

2. To the second interrogatory he says—I know Mr. Durant and Mr. Lawrence.

3. To the third interrogatory he says—I resided in Boston in 1842 and 1843. I was the confidential clerk and book-keeper of the late Judge Hubbard, and had been engaged in that relation, wholly or partially, for the previous ten years. I was conversant with accounts and book-keeping, mercantile and other.

4. To the fourth interrogatory he says—I am acquainted with the existence, in the years 1842 and 1843, of a controversy between said Durant, Joseph Foster, and Seth Dewing. It was in relation to their partnership accounts; the three having been partners in paper-making. This controversy was submitted to referees. These were Judge Merrill, Edmund P. Tileston, and Moses Grant. The said referees employed me to audit the accounts between the parties, and I did audit them. I was occupied in the work about nine months, ending in April, 1843. Under the instructions of the referees, I found that Durant was indebted to the company in the sum of thirteen thousand three hundred and eighty-four dollars and fifty-seven cents. Joseph Foster owed the company fifteen hundred and seventy dollars and eighty-two cents; and the company owed Seth Dewing thirteen thousand, four hundred and eighty-four dollars and thirty-six cents. I have not in my possession a copy of the account as I made it up. If I can get a copy I will annex it. The above amounts are taken from a memorandum in my possession, and I believe them to be correct.

The copies of the accounts are hereto annexed, marked B, D, F.

5. To the fifth interrogatory he says—I submitted my accounts to the parties before making my report to the referees, so far as they were made up, and afterwards in the presence of the referees, when all the parties were together. They were submitted to the parties that they might understand them and make exceptions, and assent to what was agreed upon. I submitted my account to the said Durant at Andover, at the office of N. W. Hazen, esq., and in his presence, March 23 or

24, 1843. The said Durant examined the accounts and asked explanations, and I gave them; and I am confident that he was made aware of the result then arrived at. I communicated the result of my investigations to the referees, March 31, 1843, and the said referees adopted the same as a correct statement of the accounts between the said parties. The referees awarded a sum as due from Durant to Foster and Dewing which was less than the amount shown by the accounts as stated by me, but what the amount was I do not know. From what I heard Judge Merrill say, I presume that this arose from the fact that there was certain equitable considerations in the case which they deemed to be in favor of Mr. Durant. I do not know how long before the publication of the award it was, that Mr. Durant knew of the sum awarded.

Answer to the Cross-interrogatory.

I think that the said Durant did deny the correctness of the said account. I have no recollection that he denied at that time that he was indebted at all to the said Foster and Dewing, or claimed that a balance was due from them to him. I think that he objected to some of the items against him, and also contended that items to his credit were omitted. I do not think it was a large amount. He also claimed an allowance for services.

GEO. ROGERS.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.—City of Boston.

On the twenty-first, the twenty-second, and the twenty-fourth days of April, A. D. 1852, the aforesaid deponents, Joseph Foster and George Rogers, came before me, and I then carefully examined them on oath touching the premises, and in reply to the interrogatories hereto annexed; and the examination of each deponent, so taken, was reduced to writing by me, and by the said deponent subscribed in my presence. These depositions are taken by the virtue of the commission hereto annexed, and in reply to the interrogatories thereto annexed; and all the directions contained in the said commission were carefully observed by me in executing the same.

GEO. S. HILLARD, *Commissioner.*

U. S. CIRCUIT COURT.

DURANT
vs.
LAWRENCE & al.

It is agreed that the accounts annexed to Geo. Rogers's deposition need not be printed, it being understood that the plaintiff does not hereafter print any other accounts not already put into the case, which might be used as contradicting or impeaching the said accounts, and both parties to be at liberty to refer to said accounts at the hearing, as if they had been printed.

C. G. RIPLEY, *for Defts.*
Oct. 1, 1852. S. BARTLETT, *for Pltffs.*

[This paper-writing was exhibited to, and identified by, Robert Farley, in his deposition taken before me, January 20, 1852, by a virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant vs. Lawrence & al.

G. S. HILLARD, *Commissioner.*]

Adolphus Durant to Abraham Marland.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex and commonwealth of Massachusetts, paper-maker, in consideration of sixteen hundred dollars paid by Abraham Marland of Andover, in said county, manufacturer, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell and convey unto the said Marland, two pieces of land situate in said Methuen, together with the paper-mill and all the buildings and fixtures thereon, viz: the first piece bounded as follows, viz: beginning at the northwest corner at a stake and stones by land of Daniel Merrill, formerly of Osgood & Merrill; thence north fifty-two degrees, east fifteen rods and sixteen links, to a poplar tree by Spicket river; thence down said river sixty-three rods and thirteen links to a beach tree; thence north eighty-nine degrees, west nineteen rods and five links, to a stake and stones by land of said Daniel, thence north forty-one rods five links to the first-mentioned bound. The second piece contains one half of an acre, more or less, bounded as follows, viz: beginning at a stake and stones on the easterly side of Spicket river, by land formerly of Enoch Poor, deceased; thence north thirty-nine degrees east to a hemlock tree by the end of the wall, about thirty rods; thence westerly about ten rods to a stake and stones by said river; thence down said river about thirty rods to the first bound, with liberty to build and maintain a dam across said river and join to land formerly of said Poor, where it formerly stood; also to flow said river in a middling run of water as high up as where said Durant's line crosses said river; also the privilege of the fall of water below said dam, so that it be at no time more than one foot above the mud sill; also a road two rods wide through land of said Daniel, he making one fence to the town road, where it was formerly trod, or such other place as the parties may agree on; also to land lumber and all other articles for his own use at the mouth of said river, and to cart the same through land of said Daniel; and I reserve to said Daniel, his heirs and assigns, the right of passing through the above-mentioned land to and from the mouth of said river, being the same premises conveyed to me by said Marland by a deed bearing even date with these presents: To have and to hold the afore-granted premises to the said Abraham Marland, his heirs and assigns, to his and their use and behoof forever. And I do covenant with the said Abraham Marland, his heirs and assigns, that I am lawfully seized in fee of the above-granted premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said Marland; and that I will warrant and defend the same premises to the said Marland, his heirs and assigns, forever, against the lawful claims and demands of all persons. Provided,

nevertheless, that if the said Durant, his heirs, executors or administrators, pay to said Marland, his heirs, executors, administrators or assigns, the sum of sixteen hundred dollars, by instalments of three hundred dollars per year, till the whole is paid, the first instalment to be paid in one year from this date, with interest semi-annually; then this deed, as also a certain note of hand bearing even date with these presents, given by the said Durant to the said Marland, or order, to pay the same sum with interest semi-annually at the times aforesaid, shall both be void; otherwise shall remain in full force.

In witness whereof, I, the said Adolphus Durant, and I, Maria C. Durant, the wife of said Adolphus Durant, in token that I hereby release and quit-claim all my right of dower in the premises, have hereunto set our hands and seals this fourth day of November, in the year of our Lord one thousand eight hundred and forty.

ADOLPHUS DURANT,
MARIA C. DURANT.

Signed, sealed, and delivered in presence of us,

SAMUEL MERRILL,
SAMUEL GRAY.

S. WASHBURN, witness to Mrs. Durant's signature.

ESSEX, *ss.*, December 29, 1840. Then the above-named Adolphus Durant acknowledged the above instrument to be his free act and deed—before me, SAMUEL MERRILL, *Just. of Peace.*

ESSEX, *ss.* Received April 29, 1841, 16 minutes before 7 a. m. Recorded book 324, leaf 93, and examined by R. H. FRENCH, *Regr.*

Assignment to Robert Farley.

Know all men by these presents, that I, Abraham Marland, within named, for and in consideration of the sum of fifteen hundred ninety-five dollars forty-two cents paid me by Robert Farley, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, that being the amount this day due on the within described note, secured by the within mortgage, the receipt whereof I do hereby acknowledge, have assigned and transferred, and by these presents do assign and transfer unto the said Robert Farley, all the right, title and interest I have, by virtue of the within mortgage, to the within described premises, together with the within described note, and all that may be due thereon; which note I have this day endorsed, assigned and transferred to the said Farley, without recourse to me in default of payment thereof.

In witness whereof, I have, this twenty-fifth day of April, A. D. 1845, hereunto set my hand and seal.

ABM. MARLAND.

Signed, sealed, and delivered in presence of us—

F. COGSWELL,
B. H. PUNCHARD.

COMMONWEALTH OF MASSACHUSETTS, *Essex county, ss:*

April 25, 1845. Personally appearing, the above-named Abraham Marland acknowledged the above instrument to be his free act and deed.

Before me, F. COGSWELL, *Just. Peace.*

ESSEX, *ss.* Received April 29, 1845. Recorded book 353, leaf 25, and examined by R. H. FRENCH, *Regr.*

Assignment.—Robert Farley to Essex Company.

Know all men by these presents, that I, Robert Farley, the assignee of the within mortgage, in consideration of seventeen hundred and twenty dollars to me paid by the Essex Company, a corporation established by law, the receipt of which is hereby acknowledged, do hereby sell, transfer, assign and convey unto the said company and its assigns, the lands and tenements within described, and all my right, title, interest and estate in and to the same, together with the promissory note within mentioned, and the debt secured thereby; to have and to hold the same to the said Essex Company and its assigns, to its own use forever.

In witness whereof, I, the said Robert Farley, have hereto set my hand and seal, this twentieth day of August, A. D. eighteen hundred and forty-six.

ROBERT FARLEY.

Signed, sealed, and delivered in presence of—
EDWARD S. RAND.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

Boston, August 20th, A. D. 1846. Then the above-named Robert Farley acknowledged the above instrument to be his free act and deed.

Before me,— EDWARD S. RAND,
Justice of the Peace.

ESSEX, *ss.* Received Aug. 20, 1846. Recorded book 371, leaf 8, and examined by

R. H. FRENCH, *Regr.*

[This paper-writing was exhibited to, and identified by, Robert Farley, in his deposition taken before me January 20, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

GEO. S. HILLARD, *Commissioner.*]

Robert Farley to Essex Company.

Know all men by these presents, that I, Robert Farley, of Boston, in the county of Suffolk, and State of Massachusetts, merchant, in consideration of the sum of sixteen thousand two hundred and eighty dollars to me paid by the Essex Company, a corporation established by law in the State of Massachusetts, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, convey, release and forever quit-claim unto the said Essex Company, and its assigns, all those parcels of land situate in Methuen, in the county of Essex, and State of Massachusetts,

with the paper-mills, dwelling-house, and other buildings thereon, being the same formerly owned by Adolphus Durant, and which were conveyed to me by Joseph Foster, by his deed dated April 7th, A. D. 1845, recorded in Essex registry of deeds, book 353, fol. 127, and by Samuel Hubbard and others, trustees, by their deed, dated April 17, A. D. 1845, recorded in the said registry, book 355, leaf 53, reference being had to the said deeds, and to the deeds therein referred to, for a more particular description of the said premises; also all mill privileges and rights of water and of flowing, and all rights of way, and all other privileges and appurtenances to the said premises belonging, and all the machinery and fixtures, tools and utensils belonging to, or contained in, the said premises. Also, all rights acquired by me under and by virtue of the assignment of a certain judgment recovered by the said Samuel Hubbard and others against the said Durant, and all rights of possession under and by virtue of the writ of possession issued on the said judgment, and all moneys due and recoverable thereon; also, all my right, title, interest and estate in and to the said lands and tenements and the privileges thereto belonging, in whatever manner acquired. I having also this day assigned to the said company a certain mortgage of a part of the said premises made by the said Durant to Abr. Marland, and by the said Marland assigned to me. The said premises are subject to certain mortgages, now held by the said company. To have and to hold the afore-granted premises to the said Essex Company, and its assigns, to its own use and behoof forever. And I do hereby, for myself and my heirs, executors and administrators, covenant with the said company and its assigns, that I will, and my heirs, executors, and administrators shall, warrant and defend the same premises to the said company and its assigns forever, against the lawful claims and demands of all persons claiming from, by, or under me or them, but against no others, and excepting any claiming under the assignment of the mortgage made by me to the said company as aforesaid.

In witness whereof, I, the said Robert Farley, having no wife, have hereunto set my hand and seal, this twentieth day of August, in the year of our Lord one thousand eight hundred and forty-six.

ROBERT FARLEY.

Signed, sealed, and delivered in presence of—
EDWARD S. RAND.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

Boston, August 20th, A. D. 1846. Then personally appeared the above-named Robert Farley, and acknowledged the above instrument to be his free act and deed. Before me,

EDWARD S. RAND,
Justice of the Peace.

ESSEX, *ss.* Received August 20, 1846, 15 minutes before 5 p. m. Recorded book 371, leaf 7, and examined by

R. H. FRENCH, *Regr.*

[This paper-writing was exhibited to, and identified by, Robert Farley, in his deposition taken before me January 20, 1852, by virtue of a

commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

Samuel Hubbard, Benj. D. Greene, Wm. P. Greene, trustees, to Robert Farley.

Know all men by these presents, that we, Samuel Hubbard, Benjamin D. Greene, and William P. Greene, trustees under the will of Gardiner Greene, late of the city of Boston, deceased, in consideration of forty-five hundred dollars to me paid by Robert Farley of said Boston, merchant, the receipt whereof is hereby acknowledged, do hereby grant, assign, remise, release, and forever quit-claim unto the said Robert Farley, and his heirs and assigns, all that certain deed of mortgage of lands, mills, and mill privileges situated in Methuen, in the county of Essex, (with all their appurtenances,) made by Adolphus Durant to Joseph Foster and Seth Dewing, the interest of the said Dewing being afterwards assigned to said Foster, and the said mortgage afterwards assigned by the said Foster to us, all by deeds duly recorded in the Essex registry of deeds, which are to be referred to herewith; also, the note of the said Durant secured by said mortgage and described therein, for the principal sum of five thousand dollars, with sundry endorsements thereon. Also, a judgment recovered by us on a writ of entry on said mortgage, in the court of common pleas, for the county of Essex, holden on the third Monday of March, A. D. 1842, against said Durant; and all our rights of possession under the writ of "Habere facias" issued thereon, and returned to the office of the clerk of said court, and all leases and evidences of possession; together with all moneys recoverable on said note, judgment or leases, and all our interest and estate in all the premises. The note, mortgage and assignments being on file in the clerk's office aforesaid, with the record of said judgment. there being also an assignment to us from the Charlestown Bank, of their interest in said mortgage, duly recorded, and on file in the same office. To have and to hold the above released premises, to the said Robert Farley, and his heirs and assigns, to their use and behoof forever, but without covenant on our part, or recourse to us, or either of us, in any event whatever.

In witness whereof, we, the said Samuel Hubbard, Benjamin D. Greene, and William P. Greene, as such trustees, have hereunto set our hands and seals, this seventeenth day of April, in the year of our Lord eighteen hundred and forty-five.

SAML. HUBBARD,
BENJ. D. GREENE,
W. P. GREENE,
} *Trustees.*

Signed, sealed and delivered in presence of us—

ELIAS PHINNEY,
GEO. ROGERS,
} To S. H.

AUGUSTA E. GREENE,
SAML. MOWRY,
} witness to W. P. Greene.

GEORGE PIGGOTT, witness to signature of B. D. Greene.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss.*, April 17, 1845. Then personally appeared the abovenamed Samuel Hubbard, trustee, and acknowledged the above instrument to be his free act and deed, before me,

ELIAS PHINNEY, *Justice of the Peace.*

ESSEX, *ss.* Received May 22, 1845, 7 minutes past 9 a. m. Recorded book 355, leaf 53, and examined by R. H. FRENCH, *Reg'r.*

[This paper-writing was exhibited to and identified by Robert Farley, in his deposition taken before me January 20, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD *Commissioner.*]

[This paper-writing was exhibited to, and identified by, Joseph Foster, in his deposition taken before me April 21, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

Joseph Foster to Robert Farley.

Know all men by these presents, that I, Joseph Foster, of Newton Lower Falls, in the county of Middlesex, and commonwealth of Massachusetts, esquire, in consideration of twenty-five hundred dollars paid by Robert Farley of Boston, in the county of Suffolk, in said commonwealth, merchant, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quit-claim unto the said Robert Farley, his heirs and assigns forever, the following described pieces of land lying in Methuen, in the county of Essex, in said commonwealth, with the buildings thereon, viz.: the piece of land with the dwelling-house and barn thereon, containing about six acres, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage, being the same that Adolphus Durant bought of Isaac Bodwell. Also, another piece of land lying eastwardly of the above described, on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege thereon, being the same which Adolphus Durant bought of Joseph Bodwell, bounded, viz.: beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill, thence eastwardly by said Merrill's land to Spicket river, thence northerly and westwardly by said river to the stone bridge at said road, thence southerly by said road to the first bound, with all the rights of flowing and other privileges appertaining to the same. Also, one other piece of land lying southerly of the last-mentioned, bounded northerly by land of Daniel Merrill, eastwardly by Spicket river, southerly and westwardly by land of said Merrill. Also, one other piece of land containing about half an acre, lying on the easterly side of said river, bounded westerly by said river, southerly, easterly and northerly by land formerly of

Enoch Poor. Also, a road two rods wide, leading from the town road through land of said Merrill to the two last-described pieces of land, with a paper-mill standing on them, with the rights of flowing, building a dam, and all other rights and privileges, and subject to all the reservations as set forth in Abram Marland's deed to Adolphus Durant, dated Nov. 4, 1840, recorded book 329, leaf 73. The whole of the above described premises being subject to six mortgage-deeds to sundry persons, amounting in all to the sum of about twelve thousand dollars. The above described premises are conveyed, together with the machinery, which passes with real estate. To have and to hold the above released premises, to the said Robert Farley, his heirs and assigns, to his and their use and behoof forever. And I, the said Joseph Foster, for myself, and my heirs, executors and administrators, do covenant with the said Robert Farley, his heirs and assigns, that the premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said Robert Farley, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me, but against none other.

In witness whereof, I, the said Joseph Foster, have hereunto set my hand and seal this seventh day of April, in the year of our Lord eighteen hundred and forty-five.

JOSEPH FOSTER.

Signed, sealed and delivered, in presence of
HENRY CLARK,
SETH DEWING.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *April* 7, 1845.

Then personally appeared the above-named Joseph Foster, and acknowledged the above instrument to be his free act and deed; before me,
HENRY CLARK, *Justice of the Peace.*

ESSEX, *ss.* Received April 8, 1845, 8 minutes before 10 a. m. Recorded book 353, leaf 127; and examined by
R. H. FRENCH, *Reg'r.*

[This paper-writing was exhibited to, and testified to by, John T. Morse, in his deposition taken before me Jan. 28, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.
G. S. HILLARD, *Commissioner.*]

Schedule A.

A parcel of land situated in Lawrence, in the county of Essex, with the dwelling-house and barn thereon, containing about six acres, bounded

northerly by Spicket river, easterly by the county road, southerly and westerly by land now or formerly of Merrill Gage; also, another piece of land lying eastwardly of the above described, on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege, bounded, beginning at a stake and stones on the easterly side of said road by land now or formerly of Daniel Merrill, thence eastwardly by said land now or formerly of said Merrill, to Spicket river, thence northwardly and westwardly by said river to the stone bridge at said road, thence southerly by said road to the first bound, with all the rights of flowing and other privilege appertaining to the same; also, one other piece of land lying southerly of the last mentioned, bounded northerly by land now or formerly of Daniel Merrill, eastwardly by Spicket river, southerly and westerly by said land of said Merrill; also, one other piece of land containing about half an acre, lying on the easterly side of said river, bounded westerly by said river, southerly, easterly and northerly by land now or formerly of Enoch Poor; also, a road two rods wide leading from the town road through land of said Merrill to the two last-described pieces of land, with a paper-mill on them, with the rights of flowing, building a dam, and all other rights and privileges, and subject to the reservations set forth in the deed thereof from Abram Marland, dated November 4, 1840; recorded book 329, leaf 73.

[This paper-writing, marked A, was exhibited to, and identified by, Wm. Beals, in his deposition taken before me February 7, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

GEO. S. HILLARD, *Commissioner.*]

A.

BOSTON, *Jan.* 25, 1849.

MR. ADOLPHUS DURANT:—You are authorized and requested by me to take possession and charge of the Fourdrinier paper machine which has been used by you in the paper-mill at Methuen, and also all the copper rollers and appurtenances belonging to it, and to demand the same of any person who may have them, and hold the machine subject to my order.

WM. BEALS.

LAWRENCE, *March* 1*st*, 1849.

Received of the Essex Company the Fourdrinier machine, rollers, and appurtenances within mentioned, in conformity with the authority given me therefor by William Beals.

ADOLPHUS DURANT.

[The within written and printed paper was shown to, and testified to by, Stephen Barker, in his deposition in answer to the 37th cross inter-

rogatory taken by me under a commission from the circuit court of the United States, directed to me, dated Feb. 9, 1852, for Massachusetts district.

B. F. HALLETT, *Commissioner.*]

[The within written and printed paper was shown to, and testified to by, Daniel Saunders, jr., in his deposition in his answer to the 3d cross-interrogatory taken by me under a commission from the United States circuit court for Massachusetts district, directed to me, dated Feb. 9, 1852.

B. F. HALLETT, *Commissioner.*]

Quit-claim Deed.—Stephen Barker to Saml. Lawrence et als.

Know all men by these presents, that I, Stephen Barker of Methuen, in the county of Essex, and commonwealth of Massachusetts, esquire, in consideration of one hundred and fifty dollars to me paid by Daniel Saunders of Andover, in said county, and Samuel Lawrence and John Nesmith, both of Lowell, in the county of Middlesex, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell and convey, and forever quit-claim unto the said Saunders, Lawrence and Nesmith, their heirs and assigns, all my right, title and interest in and to the following parcels of land, viz.: one piece of land situate in said Methuen, and containing six acres more or less, with the buildings thereon, being the same lot bought by Adolphus Durant of Isaac Bodwell; one piece of land situate in said Methuen, lying easterly of said first parcel above described, containing about ten acres more or less, with a paper-mill and a water privilege thereto belonging, it being the same land bought by Adolphus Durant of Joseph Bodwell; also, one other parcel of land in said Methuen, lying southerly of said last described parcel, with a paper-mill standing thereon, and bounded northerly, southerly and westerly by land now or formerly of Daniel Merrill, and easterly by Spicket river; also, one other parcel of land situate in said Methuen, containing about one half an acre, lying on the easterly side of said river, and opposite to said last described lot of land, with a road two rods wide leading from the county road in said Methuen, through land now or formerly of said Merrill, to the two last described lots of land, with the rights of flowing, building a dam, and all other rights and privileges pertaining to said mills; subject to the same reservations set forth in a deed of the premises aforesaid from Abram Marland to said Adolphus Durant, dated Nov. 4th, A. D. 1840, and recorded in the Essex registry of deeds, book 329, leaf 73; also, all my right and title to the machinery in said mills; the above described premises being subject to several mortgage-deeds. It being the intent of this deed to convey the same title conveyed to me by Jesse Sargent by deed of September 11th, A. D. 1843, and subject to the same liabilities and incumbrances; the aforesaid premises being the same conveyed by said Barker to the said Saunders, Lawrence and Nesmith, by deed dated March 19th, 1845, and recorded in the Essex registry of deeds, book 351, page 332, to which said reference may be had for a further description of said premises; said deed of

March 19th, 1845, being given on certain conditions therein expressed, which said conditions become hereof fully performed, and this deed being given in further assurance and confirmation of said deed of March 19th, 1845. To have and to hold the aforegranted premises to the said Saunders, Nesmith and Lawrence, their heirs and assigns, to their use and behoof forever. And I do covenant with the said Lawrence, Nesmith and Saunders, their heirs and assigns, that said premises are free of all incumbrances, by me, said Barker, made or suffered. That I have a good right to sell and convey the same to the said Saunders, Lawrence and Nesmith, in the manner as aforesaid; and that I will warrant and defend the same premises to the said Saunders, Lawrence and Nesmith, their heirs and assigns forever, against the lawful claims and demands of all persons claiming from, by, or under me, and none other.

In witness whereof, I, the said Stephen Barker, have hereunto set my hand and seal this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-five.

STEPHEN BARKER.

Signed, sealed and delivered in presence of us—
WM. MINOT, JR.

ESSEX, *ss.*, March 27, 1845. Then the above named Stephen Barker acknowledged the above instrument to be his free act and deed; before me, R. H. FRENCH, *Justice of the Peace.*

ESSEX, *ss.* Received March 27, 1845, 20 minutes past 11 a. m. Recorded book 352, leaf 115, and examined by
R. H. FRENCH, *Reg'r.*

[The within written paper was exhibited to, and testified to by Stephen Barker, in his answer to the 36th cross-interrogatory, in his deposition taken by me under a commission from U. S. circuit court for Massachusetts district, to me directed, dated Feb. 9th, 1852.
B. F. HALLETT, *Commissioner.*]

[The within written paper was also exhibited to Daniel Saunders, jr., and was testified to by him in his answer to the 3d cross-interrogatory, in his deposition taken by me under a commission from the United States circuit court for Massachusetts district, to me directed, dated Feb. 9, 1852.
B. F. HALLETT, *Commissioner.*]

Adolphus Durant to Samuel Lawrence et al.—Deed.

Copy, B. 351, L. 241.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, and commonwealth of Massachusetts, paper-maker, in consideration of five dollars paid by Samuel Lawrence and John Nesmith of Lowell, in the county of Middlesex, and Daniel

Saunders of Andover, in the county of Essex, and commonwealth aforesaid, manufacturers, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey, and forever quit-claim unto the said Samuel Lawrence, John Nesmith, and Daniel Saunders, the following described pieces of land lying in Methuen, in said county of Essex, with the buildings thereon, and the rights, privileges and appurtenances thereto belonging, and bounded and described as follows, viz: the first piece contains about six acres with a dwelling-house and barn thereon, bounded northerly by Spicket river, easterly by county road, southerly and westerly by land of Merrill Gage, it being the same which I bought of Isaac Bodwell. The second piece of land lies easterly of the land above described on the easterly side of said road, containing about ten acres, with a paper-mill and water privilege, together with all the machinery used in the mill when the mill is in full operation, for the purpose of making paper, and conducting the usual business of the establishment, bounded beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill, thence eastwardly by said Merrill's land to Spicket river, thence northerly up said river ten rods, thence eastwardly across said river to a stake and stones on the easterly side of the river, thence northerly and westerly by the side of said river including the same to the stone bridge at said road, thence southerly by said road to the first bound; also, a piece of land on the easterly side of said river opposite to the dam, and extending six rods below and six rods above the dam and four rods wide from the river, with the privilege of passing and repassing through land formerly owned by Joseph Bodwell from said road to the last-mentioned piece of land by the dam, by closing gates and bars; also, the privilege of two rods wide on land late of said Joseph Bodwell above the mouth of Bloody brook for digging gravel; also, the privilege of the stream with the right of keeping the dam at its present height, together with all other rights of flowing, and other privileges of every description pertaining to the premises to which I am entitled, it being the same which I bought of Joseph Bodwell. The third piece of land contains about seven acres, lying southerly of the last described, bounded northerly, southerly and westerly by land of Daniel Merrill, and eastwardly by Spicket river, with the paper-mill standing thereon, together with all the machinery in said mill used for conducting the business of making paper and conducting the usual business of the establishment; also, all my right of flowing and raising a dam on the premises; also, another piece of land containing about half an acre, lying on the easterly side of said river, opposite to the mill, bounded westerly by said river, southerly, easterly and northerly by land of heirs of Enoch Poor, deceased; also, a road two rods wide leading from said road to the last described premises through land of said Merrill. The last described premises being the same which I bought of Abram Marland, by deed dated Nov. 4, 1840, and recorded book 329, leaf 73. To have and to hold the above-granted premises with the privileges and appurtenances thereto belonging to the said Lawrence, Nesmith and Saunders, their heirs and assigns, to their use and behoof forever. And I, the

said Adolphus Durant, for myself, my heirs, executors and administrators, do covenant with the said Lawrence, Nesmith and Saunders, that I have good right to sell and convey the same to the said Lawrence Nesmith and Saunders, as aforesaid. Provided, nevertheless, and this deed is made upon the express conditions following, namely, that the said grantees or their assigns shall, within forty-three days from this date, pay to the said Adolphus Durant, or his assigns, the sum of five hundred dollars, and that the said Durant, until the payment of the said sum as aforesaid, shall have and keep full and undisturbed possession of the premises; and in case of default of the said Lawrence, Nesmith and Saunders, or their assigns, in payment of said sum within said term, then this deed shall be wholly void and of no effect whatever.

In testimony whereof, I, the said Adolphus Durant and Maria C. Durant, wife of the said Adolphus, in testimony that she hereby relinquishes her right of dower in the above-granted premises, have hereunto set our hands and seals, this eighteenth day of March, in the year of our Lord one thousand eight hundred and forty-five.

ADOLPHUS DURANT, [SEAL.]
MARIA C. DURANT. [SEAL.]

Executed and delivered in presence of
STEPHEN BARKER.

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss.*, March 18th, 1845. Then personally appeared Adolphus Durant and Maria C. Durant, and acknowledged the foregoing instrument to be their free act and deed; before me,

STEPHEN BARKER, *Justice of the Peace.*

ESSEX, *ss.* Received March 21, 1845, 30 minutes past 9 a. m.; recorded and examined by R. H. FRENCH, *Regr.*

ESSEX, *ss.* Registry of deeds, May 23d, 1851. The foregoing is a true copy of record. Attest: R. H. FRENCH, *Regr.*

[The within paper-writing was exhibited to Daniel Saunders, jr., and by him testified to in his answer to the 3d cross-interrogatory in his deposition taken by me under a commission directed to me by the circuit court U. S. for Mass. district, dated Feb. 9, 1852.

B. F. HALLETT, *Commissioner.*]

Original Draft of the Bond proposed to be signed by S. Lawrence and others, March 18th, 1845.

Know all men by these presents, that we, Samuel Lawrence and John Nesmith, both of Lowell, in the county of Middlesex, and Daniel Saunders of Andover, in the county of Essex and commonwealth of Massachusetts, manufacturers, are held and firmly bound and obliged unto Adolphus Durant in the full and just sum of thirty thousand dollars, to be paid to the said Durant, his heirs and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, administrators, and executors.

In witness whereof, we have hereunto set our hands and seals this 18th day of March, A. D. 1845.

The condition of this obligation is such, that whereas said Durant has, by deed of even date herewith, conveyed unto said Lawrence, Nesmith and Saunders, certain premises in the town of Methuen, and county of Essex, comprising two paper-mills and other buildings, and about twenty-three acres of land; the condition of which deed is, that if said Lawrence, Nesmith and Saunders shall pay on or before the first of May next the sum of five hundred dollars, then the title to said premises shall become permanently and absolutely vested in the said Lawrence, Nesmith and Saunders, said deed being given in consideration of the following agreement:—

Now it is hereby agreed by and between said Lawrence, Nesmith, Saunders and Durant, that if the said Lawrence, Nesmith and Saunders shall make the title of said premises permanent and absolute in themselves by performing the condition of aforesaid deed, then they, the said Lawrence, Nesmith and Saunders, shall pay to said Durant the further sum of the remainder of twenty-four thousand and five hundred dollars, if any there be after deducting from said twenty-four thousand and five hundred dollars all the legal claims and demands which any person or persons may have on, in, or against said premises, and the expenses which may accrue in the extinguishment of said claims and demands. And it is further agreed that if said Lawrence, Nesmith and Saunders shall choose to retain the Fourdrinier machine now in one of said mills, then an additional sum of two thousand dollars shall be added to said sum of twenty-four thousand and five hundred dollars, and the remainder, after deducting said claims and expenses aforesaid, shall be paid to said Durant.

Now, if said Lawrence, Nesmith and Saunders shall well and truly pay or cause to be paid the sum or sums as aforesaid, then this instrument to be null and void, otherwise to remain in full force and effect.

And it is further agreed, that provided said claims and demands on or against the premises shall not exceed the sum of twenty-four thousand and five hundred dollars, then said Lawrence, Nesmith and Saunders shall, on or before the first of April next, make known in writing to said Durant whether or not they will make absolute the sale of said premises.

And it is further agreed that if said claims and demands shall be ascertained on the first of May next, then the sums aforesaid shall be paid on or before said first of May.

This bond written by me I hereby certify was acceded to by Mr. Durant, and was the one intended to be signed by the parties herein named. D. SAUNDERS, JR.

[The within written and printed paper was exhibited to Stephen Barker, and was testified to by him in his answer to the 56th cross-interrogatory in his deposition taken by me under a commission to me directed from the circuit court of the United States, dated Feb. 9, 1852, for the Massachusetts district.

B. F. HALLETT, *Commissioner.*]

Jesse Sargent to Stephen Barker.

Know all men by these presents, that I, Jesse Sargent of Andover, in the county of Essex, and commonwealth of Massachusetts, trader, in consideration of fifteen dollars paid by Stephen Barker of Methuen, in the county and commonwealth aforesaid, esquire, the receipt whereof I do hereby acknowledge, do hereby remise, release, bargain, sell and convey, and forever quit-claim unto the said Stephen Barker, his heirs and assigns forever, all my right, title, and interest in and to the following piece of land lying in said Methuen, with the buildings thereon, viz: The piece of land with my dwelling-house and barn thereon, containing about six acres, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage, being the same that Adolphus Durant bought of Isaac Bodwell. Also, another piece of land lying easterly of the above described, on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege thereon, being the same which said Durant bought of Joseph Bodwell, bounded, beginning at a stake and stones on the easterly side of said road, by land of Daniel Merrill, thence eastwardly by said Merrill's land to Spicket river, thence northerly and westwardly by said river to the stone bridge at said road, thence southerly by said road to the first bound; with all the rights of flowing and other privileges appertaining to the same. Also, one other piece of land lying southerly of the last mentioned, bounded northerly, southerly and westwardly by land of Daniel Merrill, eastwardly by Spicket river, with a paper-mill standing thereon. Also, one other piece of land containing about half an acre lying on the easterly side of said river, opposite to the last described land, bounded westerly by said river, southerly, easterly and northerly by land formerly of Enoch Poor, deceased; also, a road two rods wide leading from the town road through land of said Merrill to the two last-described pieces of land, with the rights of flowing, building a dam, and all other rights and privileges pertaining to said mill, subject to the reservations as set forth in a deed of the same from Abram Marland to the said Durant, dated Nov. 4, 1840, recorded book 329, leaf 73; the whole above described being subject to several mortgage-deeds to sundry persons. All the machinery in the mills is included in the foregoing sale. The intent and meaning of this deed is to convey all the estate conveyed to me by Adolphus Durant, by deed March 29th, 1843, and recorded in the registry of deeds for said county of Essex, book 336, leaf 257. To have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to him, the said Stephen Barker, his heirs and assigns forever. And I do covenant with the said Stephen Barker, his heirs and assigns, that I will warrant and forever defend the premises to him, the said Stephen Barker, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, I, the said Jesse Sargent, and Hannah, wife of the said Jesse, in token that she hereby releases her right of dower in the

premises, have hereunto set our hands and seals this eleventh day of September, in the year of our Lord one thousand eight hundred and forty-three.

JESSE SARGENT,
HANNAH SARGENT.

Signed, sealed and delivered in presence of

GEO. HODGES,
LUCY A. GRIFFIN.

ESSEX, *ss.*, January 9th, 1845. Personally appeared the above named, and acknowledged the above instrument to be his free act and deed; before me, GEO. HODGES, *Justice of the Peace.*

ESSEX, *ss.* Received March 21, 1845, 30 minutes past 9 a. m. Recorded book 351, leaf 270, and examined by

R. H. FRENCH, *Regr.*

[The within written and printed paper was exhibited to, and testified to by Stephen Barker, in his answer to the 36th cross-interrogatory in his deposition taken by me under a commission from the circuit court, United States for Massachusetts district, directed to me, dated Feb. 9, 1852.

B. F. HALLETT, *Commissioner.*]

Stephen Barker to Samuel Lawrence and others.

Know all men by these presents, that I, Stephen Barker of Methuen, in the county of Essex, in the commonwealth of Massachusetts, in consideration of twenty-five dollars paid by Samuel Lawrence and John Nesmith of Lowell, in the county of Middlesex, and Daniel Saunders of Andover, in the county of Essex, in the commonwealth of Massachusetts, manufacturers, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey, and forever *quit-claim* unto the said Samuel Lawrence, John Nesmith and Daniel Saunders, all my right, title and interest in and unto the following described pieces of land, with the buildings thereon, lying in Methuen aforesaid, bounded and described as follows, viz: A piece of land with a dwelling and barn thereon, containing about six acres, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage, being the same which Adolphus Durant bought of Isaac Bodwell. Also, another piece of land lying easterly of the piece above described, on the opposite side of the road, containing about ten acres, with a paper-mill thereon, and a water privilege thereto belonging, being the same which said Durant bought of Joseph Bodwell, bounded, beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill, thence eastwardly by said Merrill's land to Spicket river, thence northerly and westerly by the said river to the stone bridge at said road, thence southerly by said road to the first bound,

with all the rights of flowing and other privileges appertaining to the same. Also, one other piece of land lying southerly of the last mentioned, bounded northerly, southerly, and westerly by land of said Daniel Merrill, eastwardly by Spicket river, with a paper-mill standing thereon. Also, one other piece of land containing about half an acre, lying on the easterly side of said river, opposite to the last described land, bounded westerly by said river, southerly, easterly and northerly by land formerly of Enoch Poor, deceased. Also, a road two rods wide leading from the county road through land of said Merrill to the two last described pieces of land, with the rights of flowing, building a dam, and all other rights and privileges pertaining to said mill, subject to the reservations as set forth in a deed of the same of Abram Marland to said Durant, dated Nov. 4th, 1840, recorded book 329, leaf 73. Also, all my right and title to the machinery in said mills. The whole of the above described estate being subject to several mortgage-deeds. The intent and meaning of this deed is to convey all the estate conveyed to me by Jesse Sargent by his deed of Sep. 11th, 1843, and subject to the same liabilities and incumbrances.

To have and to hold the above-granted premises, with the privileges and appurtenances thereto belonging, to the said Lawrence, Nesmith and Saunders, their heirs and assigns, to their use and behoof forever, against all persons claiming by, from, or under me. And I, the said Stephen Barker, for myself, my heirs, executors and administrators, do covenant with the said Lawrence, Nesmith and Saunders, that I have good right to sell and convey the same to the said Lawrence, Nesmith and Saunders, in manner as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said Lawrence, Nesmith and Saunders, their heirs and assigns forever, against the lawful claims and demands of all persons claiming by or under me. Provided, nevertheless, and this deed is made upon the express conditions following, namely, that the said grantees or their assigns shall within forty-three days from this date pay to the said Stephen Barker, or his assigns, the sum of one hundred and twenty-five dollars, and that the said Stephen Barker, until the payment of the said sum as aforesaid, shall have and keep full and undisturbed possession of the premises; and in case of default of the said Lawrence, Nesmith and Saunders, or their assigns, in payment of said sum within said term, this deed shall be wholly void and of no effect whatever.

In testimony whereof, I, the said Stephen Barker, have hereunto set my hand and seal this nineteenth day of March, in the year of our Lord one thousand eight hundred and forty-five.

STEPHEN BARKER.

Executed and delivered in presence of
CHARLOTTE BARKER,
JOHN TENNEY.

COMMONWEALTH of MASSACHUSETTS, ESSEX, *ss.*, *March 20th*, 1845.—Then personally appeared the above-named Stephen Barker,

and acknowledged the foregoing instrument to be his free act and deed; before me,

JOHN TENNEY,
Justice of the Peace.

Essex, *ss.* Received March 21, 1845, 30 minutes past 9 a. m. Recorded book 351, leaf 232, and examined by

R. H. FRENCH, *Regr.*

[This paper-writing, marked A, was exhibited to, and identified by, Jacob How in his deposition taken before me Feb. 28, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

[This paper-writing was exhibited to, and identified by, Joseph Foster, in his deposition taken before me April 21, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

Conditions of Assignee's Sale of the Real Estate and Machinery of Paper-mills of A. Durant, May 31, 1844.

Said real estate and machinery is to be sold to the highest bidder, subject to all the claims and incumbrances on the same, it being expressly stipulated that the assignee guaranties nothing. Cash to be paid on delivery of the deed, which shall be in a reasonable time after the sale.

Sold to Joseph Foster for six hundred dollars.

JOSEPH FOSTER.

May 31st, 1844.

[This paper-writing was exhibited to, and identified by, John Tenney in his deposition taken before me March 24 and 25, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

Mort. Deed.—Adolphus Durant to John Tenney.

Know all men by these presents, that I, Adolphus Durant of Methuen, in the county of Essex, and commonwealth of Massachusetts, paper-maker, in consideration of fifteen hundred dollars to me paid by John Tenney, of Methuen aforesaid, esquire, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell and convey unto the said John Tenney, his heirs and assigns forever, two pieces or parcels of land with all the buildings thereon, situate in said Methuen, viz., the first piece bounded as follows, viz.: beginning at the northwest corner thereof, at a stake and stones, by land of Daniel Merrill, thence north 52

degrees, east fifteen rods and sixteen links, to a poplar tree by Spicket river, thence down said river sixty-three rods and thirteen links to a beech tree, thence north 89 degrees, west nineteen rods and five links, to a stake and stones by land of said Merrill, thence north forty-one rods and five links to the first-mentioned bound. The second piece contains one half an acre, more or less, bounded as follows, viz: beginning at a stake and stones on the easterly side of Spicket river, by land formerly of Enoch Poor, deceased, thence north 39 degrees east to a hemlock tree by the end of the wall about thirty rods, thence westerly about ten rods to a stake and stones by said river, thence down said river, *thence down said river* about thirty rods to the first bound; with liberty to build and maintain a dam across the said river and join the land formerly of said Poor where it formerly stood; together with the water privilege on the premises, with all the rights, privileges and appurtenances thereunto belonging, meaning hereby to convey all that was conveyed to me by Abram Marland, by his deed dated Nov. 4th, 1840, to which reference is had for a particular description; also the paper-mill on the premises, with all the paper machinery, tools and fixtures of every description in or about said mill. To have and to hold the afore-granted premises to the said John Tenney, his heirs and assigns, to his and their use and behoof forever. And I, for myself, my heirs, executors and administrators, do covenant with the said Tenney, his heirs and assigns, that I am lawfully seized in fee of the afore granted premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said Tenney. And that I, for myself, my heirs, executors and administrators, will warrant and defend the same premises to the said Tenney, his heirs and assigns, forever, against the lawful claims and demands of all persons. Provided, nevertheless, that if the said Adolphus Durant, his heirs, executors, or administrators, pay to the said John Tenney, his heirs, executors, administrators or assigns, the sum of fifteen hundred dollars on demand, with legal interest thereon, then this deed, as also a certain promissory note bearing even date with these presents, given by the said Durant to the said Tenney, to pay the same sum and interest at the time aforesaid, shall both be void; otherwise shall remain in full force.

In witness whereof, I, the said Adolphus Durant and Maria C. Durant, wife of said Adolphus Durant, who hereby relinquishes her right of dower in the premises, have hereunto set our hands and seals this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and forty-two.

ADOLPHUS DURANT,
MARIA C. DURANT.

Signed, sealed and delivered in presence of us.

ESSEX, *ss.*, Jan'y 28, 1842. Then the above-named Adolphus Durant acknowledged the above instrument to be his free act and deed; before me,

R. H. FRENCH,
Justice of the Peace.

Essex, *ss.* Received Jan. 28, 1842, 5 minutes past 3 p. m. Recorded book 329, leaf 73, and examined by

R. H. FRENCH, *Regr.*

Assignment to the Essex Company.

Know all men by these presents, that I, the within-named John Tenney, in consideration of twelve hundred seventy-three dollars and forty-six cents to me paid by the Essex Company, a body incorporated by act of this commonwealth, the receipt whereof is hereby acknowledged, do hereby transfer, assign and set over to the said Essex Company the within mortgage-deed, and forever quit-claim to said Essex Company all my right and title to the estate within conveyed to me in mortgage, to have and to hold the same to the said Essex Company, their successors and assigns, to their use and benefit forever.

Witness my hand and seal this fourteenth day of May, A. D., 1845.

JOHN TENNEY.

Executed in presence of
Joseph Kittredge.

Essex, *ss.*, May 14th, 1845. Then the above-named John Tenney acknowledged the above instrument to be his free act and deed; before me,

JOSEPH KITTREDGE, *Jus. Peace.*

Essex, *ss.* Received May 19th, 1845; recorded book 352, leaf 180, and examined by R. H. FRENCH, *Regr.*

[This paper-writing was exhibited to, and identified by, Jacob How, in his deposition taken before me Feb. 28, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

[This paper-writing was exhibited to, and identified by, Joseph Foster, in his deposition taken before me April 21, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

Adolphus Durant's Assignee, (Jacob How,) to Joseph Foster.—Deed.

(Copy, B. 353, L. 126.)

Know all men by these presents, that I, Jacob Howe of Haverhill, in the county of Essex, and commonwealth of Massachusetts, esquire, as assignee of the estate of Adolphus Durant of Methuen, in said county, paper-maker, an insolvent debtor, in consideration of six hundred dollars paid by Joseph Foster of Newton, in the county of Middlesex, esquire,

the receipt whereof is hereby acknowledged, do by these presents, grant, remise, release, and forever quit-claim unto the said Foster, his heirs and assigns, (he being the highest bidder at a sale by public auction held on the premises on the thirty-first day of May, A. D. 1844, of the estate hereinafter described,) all the estate, right, title and interest which the said Adolphus Durant had on the twenty-first day of October, A. D. 1843, in and to the following described parcels of land and mill privileges, situated in Methuen aforesaid, with the buildings thereon, viz.: about six acres of land with said Durant's dwelling-house and barn thereon, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage, being land conveyed to said Durant by Isaac Bodwell. Also, another piece of land lying eastwardly of the above described on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege thereon, being land conveyed to said Durant by Joseph Bodwell, bounded, beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill, thence eastwardly by said Merrill's land to Spicket river, thence northerly and westwardly by said river to the stone bridge at said road, thence southerly by said road to the first bound, with all the rights of flowing and other privileges appertaining to the same. Also, one other piece of land lying southerly of the last mentioned, bounded northerly by land of Daniel Merrill, eastwardly by Spicket river, southerly and westerly by land of said Merrill. Also, one other piece of land containing about half an acre, lying on the easterly side of said river, bounded westerly by said river, southerly, easterly and northerly by land of Enoch Poor, formerly; also, a road two rods wide leading from the town road through land of said Merrill to the two last described pieces of land, on which a paper-mill stands, with the rights of flowing, building a dam, and all other rights and privileges, and subject to the reservations as set forth in the deed of Abram Marland to said Durant, dated Nov. 4, 1840, recorded, book 329, leaf 73, together with the machinery which passes with said real estate, the whole being subject to sunpry mortgages to sundry individuals, amounting in all to about the sum of twelve thousand dollars. To have and to hold the above described premises to him, the said Joseph Foster, his heirs and assigns, to their use and behoof forever, subject to the then existing incumbrances on the same. And I do covenant for myself, my heirs, executors and administrators, to and with the said Foster, his heirs and assigns, that I will, and my heirs shall, warrant and defend the said premises unto him, the said Foster, his heirs and assigns, against the lawful claims of all persons claiming by, through or under me, but not otherwise. And for the consideration aforesaid, and for divers other good and valuable considerations, do hereby release, and quit-claim unto the said heirs and assigns, all right, claim or possibility of dower in or out of the aforedescribed premises.

In witness whereof, I, the said Jacob How, in my said capacity of assignee, have hereunto set my hand and seal this first day of June, in the year of our Lord eighteen hundred and forty-four.

JACOB HOW. [SEAL.]

Signed, sealed and delivered in presence of us,
EDMUND FLETCHER,
JAMES H. DUNCAN.

ESSEX, *ss.*, April 5, A. D. 1845. Then personally appeared the above-named Jacob How, and acknowledged the foregoing instrument to be his free act and deed; before me,

JAMES H. DUNCAN,
Justice of the Peace.

ESSEX, *ss.* Received, April 8, 1845, 8 minutes before 10 a. m. Recorded and examined by

R. H. FRENCH, *Regr.*

ESSEX, *ss.*, May 3d, A. D. 1851. The foregoing is a true copy of record. Attest:

R. H. FRENCH, *Regr.*

[This paper-writing, with the advertisement attached thereto, was exhibited to, and testified to, by E. H. Safford, John Tenney, and J. W. Carleton, in their depositions taken before me by virtue of commissions proceeding from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

[This paper-writing, with the advertisement attached thereto, was exhibited to, and testified to by, Joseph Foster, in his deposition taken before me April 21, 1852, by virtue of a commission issuing from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

[This paper-writing was exhibited and testified to by Seth Dewing, in his deposition taken before me May 13, 1852, by virtue of a commission proceeding from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

G. S. HILLARD, *Commissioner.*]

[The within written and printed paper was exhibited to Stephen Barker, and was testified to by him in his answer to the 72d cross interrogatory in his deposition taken by me under a commission from the circuit court of the United States for the Massachusetts district, directed to me, dated Feb. 9, 1852.

B. F. HALLETT, *Commissioner.*]

(Copy.)

A. Durant.—Deed to Jesse Sargent.

A.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, and commonwealth of Massachusetts, paper-maker, in consideration of six thousand dollars to me paid by Jesse Sargent, of Andover, in the county and commonwealth aforesaid, trader, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Jesse Sargent the following described pieces of land lying in said Methuen, with the buildings thereon, viz: the piece of land with my dwelling-house and barn thereon, containing about six acres, bounded northerly by Spicket river, easterly by the county road, southerly and westerly by land of Merrill Gage, (being the same that I bought of Isaac Bodwell); also another piece of land lying eastwardly of the above described on the opposite side of the road, containing about ten acres, with a paper-mill and water privilege thereon, (being the same which I bought of Joseph Bodwell,) bounded, beginning at a stake and stones on the easterly side of said road by land of Daniel Merrill, thence eastwardly by said Merrill's land to Spicket river, thence northerly and westwardly by said river to the stone bridge at said road, thence southerly by said road to the first bound, with all the rights of flowing, and other privileges appertaining to the same; also one other piece of land lying southerly of the last-mentioned, bounded northerly by land of Daniel Merrill, eastwardly by Spicket river, southerly and westerly by land of said Merrill; also one other piece of land containing about half an acre lying on the easterly side of said river, bounded westerly by said river, southerly, easterly and northerly by land formerly of Enoch Poor; also a road two rods wide leading from the town road through land of said Merrill to the two last described pieces of land, with a paper-mill standing on them, with the rights of flowing, building a dam, and all other rights and privileges, and subject to the reservations as set forth in the deed of the same from Abram Marland, dated Nov. 4, 1840, recorded book 329, leaf 73, (the whole above-described being subject to six mortgage-deeds to sundry persons, amounting in all to the sum of eleven thousand five hundred dollars; all the machinery in the mills is included in the foregoing sale.) To have and to hold the above-granted premises, with the privileges and appurtenances thereto belonging, to the said Jesse Sargent, his heirs and assigns, to his and their use and behoof forever. And I, for myself, and my heirs, executors and administrators, do covenant with the said Jesse Sargent, his heirs and assigns, that I am lawfully seized in fee of the afore granted premises, that they are free of all incumbrances, except the aforesaid mortgages; that I have good right to sell and convey the same to the said Jesse Sargent, as aforesaid, and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Jesse Sargent, his

heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Adolphus Durant, have hereunto set my hand and seal this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and forty-three.

ADOLPHUS DURANT. [SEAL.]

[The words "to the first bound," and the word "leading," were interlined before signing]

Signed, sealed and delivered in presence of us,
STEPHEN BARKER,
STEPHEN BARKER, Jr.

MIDDLESEX, *ss.*, March 30, 1843. Then the above-named Adolphus Durant acknowledged the above instrument to be his free act and deed; before me,

STEPHEN BARKER,
Justice of the Peace.

ESSEX, *ss.* Received April 26, 1834, 15 minutes past 6 o'clock p. m. Recorded and examined, by

R. H. FRENCH, *Register.*

ESSEX, *ss.* Registry of deeds, May 4th, 1844. The above is a true copy of record. Attest:

R. H. FRENCH, *Reg'r.*

Paper-mills at Auction.

To be sold at public auction, on Monday, the 11th of September inst., on the premises in Methuen, at 10 o'clock a. m., two paper-mills with six engines, one Fourdrinier machine and steam drier, with all the usual appurtenances for a convenient paper-making establishment, situated on good water privileges. About twenty acres of good land, two dwelling-houses, and other buildings thereon, lately owned by A. Durant.

JESSE SARGENT.

Andover, Sept. 1, 1843.

[This paper-writing was exhibited and testified to by Seth Dewing, in his deposition taken before me, May 13, 1852, by virtue of a commission proceeding from the circuit court of the United States for the Massachusetts district, in the case of Durant *vs.* Lawrence & al.

GEO. S. HILLARD, *Commissioner.*

Adolphus Durant.

A.

METHUEN, 12*th June*, 1840.

MR. DEWING: Sir, yours of the 10th inst. is received, and contents noted as respecting the settlement of our affairs. You must know that I have been ready and trying for three years past to settle them, and do

think, as some others do, that it is long past the time they ought to have been settled. We could have settled three years ago as well as now, and we can settle now as well as we could three years ago, and we can settle three years hence as well as we can now, from anything I can now see. My papers are all ready, and will be kept in readiness waiting your will and pleasure; but I will not have any more *boy's play* about this business. I have travelled miles enough, spent days and money enough, to have settled the presidential election, in order to settle this concern, which only amounts, after all, to one year carrying on a paper-mill; one day ought to have been amply sufficient for us to settle in. I can settle my three years past, carrying the paper-mill on, in twenty-four hours whenever I am called upon, and walk right out of the business without detriment to any part thereof. But I will not presume to give you advice about your business, knowing well as I do, from past experience, that all I can do or say will have no effect upon you, but leave you to play off and on, as you always have done; or, rather like a locomotive, back and forward, as you foolishly think it is for your interest to do, first to make promises here, then break one there; to express a readiness with boldness, and means to go ahead, then poverty and weakness, when services are mentioned; to do all, to be the means of all, to furnish capital for all, to spend years for the good of the concern; but when losses is mentioned, to know nothing, to do nothing, to have nothing, and to be neutral in the firm. When talking about settling, to be always ready, to be earnest, to have papers ready, to know all things; but in settling, to know nothing, to have nothing ready, to lose every paper or thing of importance, and to dodge every point that is necessary to base our settlement upon. Those are some of the reasons that I would give for not meeting you again to settle our affairs; but there is one way, and not but one, and I will take the liberty to point out to you how we can make a beginning to settle, as I gave to you and Mr. Foster more than two and a half years ago my proposals, the best I could do, and a plan to settle those large points that would be likely to clash between us, and to base our settlement upon. I will now wait until I receive yours in writing, although I do not hold myself obligatory at this late period, (they getting outlawed,) but yet I will receive yours now before I can advance one step further. You can fix the outward bounds as I did, to base agreement upon, and if the landed marks are settled, we can cast up the feet and inches at our pleasure; or, you may wait until I have taken the legal and lawful steps that the laws have made and provided to settle my estate, in which I am ready and shall probably take whenever called upon. I have been expecting Congress to pass a bankrupt law, that would come more to the point, or, in other words, would reach my case better than the Mass. bankrupt law does; but as to that I now think it very doubtful. I shall not let this State have a chance to alter the law before my affairs are made straight, which I know will be the shortest and quickest, and I believe the best way for me to settle up my estate, so that I can begin new again. As I go now, never can make a beginning, for the snarls

that I have been drawn into are never to be ended, or that is, the prospect now; but even should I be clear and straight now, as the times has been with me for years past, is now, and the prospect is for the future, with my age and family, and above all, with about twenty thousand dollars debts on my shoulders, it must be but a little short of madness to think of ever paying them by my work. A man wants something, if he rides old debts and executions, for capital to do business upon to good advantage in the manufacturing line. As the case stands now with me, if I gain a dollar I have a host of creditors to light upon me for it, which much resembles the crows following a dead horse. This road I think I have travelled about long enough, and shall make some turn immediately.

Yours, respectfully,

ADOLPHUS DURANT.

Adolphus Durant to Mercantile Bank, Salem.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, paper manufacturer, in consideration of four thousand dollars to me paid by the president, directors and company of the Mercantile Bank in Salem, in said county, (the receipt whereof I do hereby acknowledge,) do hereby give, grant, sell and convey unto the said president, directors and company of the Mercantile Bank, their successors and assigns forever, the following described lots of land, situate in said town of Methuen, with all the buildings and mills and fixtures therein and thereon standing; containing, by estimation, about fourteen acres, be the same more or less, and with all the water privileges thereunto belonging: said lots are thus bounded, that is to say: the first piece beginning with a stake and stones at the southwest corner by the town road leading from Lowell to Haverhill, thence easterly on a straight line by two white oak trees, marked to Spicket river, to a stake and stones, thence up by said river ten rods to a stake and stones by said river, thence crossing said river to the easterly side, thence northerly and westerly course up by said river to the bridge, including the same, thence southerly by the road to the bounds first mentioned. The second piece begins with a stake and stones at Spicket river bridge, thence westerly by said river about forty rods to a stake and stones by land of Merrill Gage, thence southerly about thirty-five rods to a stake and stones by said Gage's land, thence easterly about eleven rods to a stake and stones by the town road, thence northerly by said road to the bound first mentioned, with all the buildings thereon, containing about six acres, be the same more or less, and all the land which I bought of Isaac and Joseph Bodwell: To have and to hold the granted premises, with the appurtenances, to the said president, directors and company, their successors and assigns, to their use and benefit forever. And I, the said Adolphus Durant, for myself, my heirs, executors, and administrators, do hereby covenant with the said president, directors and company of the Mercantile Bank, their successors and assigns, that I am lawfully seized in fee of the premises;

that they are free of all incumbrances; that I have good right to sell and convey the same to the said president, directors and company of the Mercantile Bank. And that I will, and my heirs, executors shall warrant and defend the same to the said president, directors and company of the Mercantile Bank, their successors and assigns forever, against the lawful claims and demands of any persons. And I, Maria Durant, wife of said Adolphus Durant, in consideration of one dollar to me paid by said grantees, the receipt whereof I do hereby acknowledge, do hereby release and relinquish to them and their successors and assigns, all my right of dower in and to the aforesaid premises. Provided, nevertheless, that if said Adolphus Durant, his heirs, executors, or administrators, shall pay said president, directors and company of the Mercantile Bank, their successors or assigns, said sum of four thousand dollars, on or before the third day of July, which will be in the year of our Lord one thousand eight hundred and thirty-one, with lawful interest semi-annually, then this deed, as also a certain note of hand, bearing even date with these presents, given by said Adolphus Durant to said president, directors and company of the Mercantile Bank for the first mentioned sum and interest at the time aforesaid, shall both be void; otherwise shall remain absolute.

In witness whereof, we, the said Adolphus Durant and wife, have hereunto set our hands and seals this third day of July, in the year of our Lord one thousand eight hundred and thirty.

ADOLPHUS DURANT.
MARIA DURANT.

Signed, sealed and delivered in presence of us, the printed letter "S" erased in three places, and the word "successors" interlined in three places, and also "S" and "executors, administrators" erased, and "successors" interlined before signing.

HANNAH OSGOOD.
BENJ. OSGOOD.

Witnesses for Maria Durant:
HORATIO DURANT.
ABBY S. WOSTER.

ESSEX, *ss.*, July 3d, 1830. Then the above-named Adolphus Durant acknowledged the above instrument to be his free act and deed; before me,

BENJ. OSGOOD, *Justice of the Peace.*

ESSEX, *ss.* Received in the Registry of Deeds, July 6, 1830, 8 o'clock 30 minutes a. m. Recorded book 258, leaf 118, and examined by

AMOS CHOATE, *Register.*

Assignment to Edward S. Rand et al., Trustees.

Know all men by these presents, that the president, directors and company of the Mercantile Bank in Salem, the mortgagees within named, in consideration of four thousand two hundred and twelve

$\frac{47}{100}$ dollars to them paid by Charles S. Storrow and Edward S. Rand, both of Boston, in the county of Suffolk and State of Massachusetts, trustees for the Essex Company, a corporation established by law, the receipt of which is hereby acknowledged, do hereby sell, transfer, assign and convey unto the said Storrow and Rand, and their heirs and assigns, the land and tenements, with described and conveyed, and all the right, title, interest and estate of the said president, directors and company, in and to the same, together with the promissory note within mentioned, and the debt secured thereby: To have and to hold the same to the said Rand and Storrow, trustees as aforesaid, and their heirs and assigns, to their own use forever, but without recourse to the said president, directors and company, in any event whatever.

In witness whereof, the said president, directors and company have caused these presents to be signed by Stephen Webb, their cashier, for that purpose duly authorized, and their corporate seal to be hereunto affixed, this twenty-second day of May, A. D. eighteen hundred and forty-five.

The president, directors, company of Mercantile Bank, by
STEPHEN WEBB, *Attest.*

Signed, sealed and delivered in presence of—
JOSEPH H. PHIPPEN.

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss.* Salem, May 22d, A. D. 1845. Personally appeared the above-named Stephen Webb, cashier as aforesaid, and acknowledged the above instrument to be the free act and deed of the said President, Directors and Company.
Before me, JOHN PUNCHARD, *Just. Peace.*

ESSEX, *ss.* Received May 22d, 1845. Recorded book 352, leaf 299, and examined by
R. H. FRENCH, *Register.*

Edward S. Rand et al. to Essex Company.

Know all men by these presents, that we, Edward S. Rand and Charles S. Storrow, both of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, esquires, in consideration of one dollar to us paid by the Essex Company, a corporation established by the authority of the Commonwealth aforesaid, the receipt whereof is hereby acknowledged, and for other good considerations, do hereby sell, transfer, assign and convey unto the said Essex Company, its successors and assigns, all the lands and tenements which were conveyed in mortgage by Adolphus Durant to the President, Directors and Company of the Mercantile Bank in Salem, by his deed dated July 3rd, A. D. 1830, and recorded in the Essex Registry of Deeds, lib. 258, fol. 118, and by the said President, Directors and Company assigned to us by their deed dated May 22d, A. D. 1845, and recorded in said Essex Registry, lib. 352, fol. 299; and all our right, title, interest and estate,

in and to the same, together with the promissory note therein mentioned, and the debt secured thereby: To have and to hold the same to the said Essex Company, its successors and assigns, to its and their own use forever.

In witness whereof, we, the said Edward S. Rand and Charles S. Storrow, have hereunto set our hands and seals this seventh day of June, in the year of our Lord eighteen hundred and forty-five.

EDWARD S. RAND,
CHARLES S. STORROW.

Executed and delivered in presence of
ALEX. C. WASHBURN,
FRANCIS B. HAYES.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.* Boston, June 7th, A. D. 1845. Then personally appeared the within-named Edward S. Rand and Charles S. Storrow, and acknowledged the foregoing instrument to be their free act and deed. Before me,
FRANCIS B. HAYES, *Justice of the Peace.*

ESSEX, *ss.* Received June 9th, 1845. Recorded book 353, leaf 241, and examined by
R. H. FRENCH, *Register.*

Adolphus Durant to Abigail Durant.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, and commonwealth of Massachusetts, paper-maker, in consideration of one thousand dollars to me paid by Abigail Durant, of Newton, in the county of Middlesex, single woman, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell and convey unto the said Abigail Durant, the following described land, with all the buildings thereon, being all the real estate whereof I am the owner and possessor, in the town of Methuen, to wit: one piece containing eight acres, more or less, bounded as follows, viz.: beginning at a stake and stones by the road, thence easterly to Spicket river, thence on the westerly side of said river ten rods to a stake and stones by said river, thence across said river to the easterly side, thence northerly and westerly up by said river, including the same, to the bridge, thence southerly by the road to the bounds first mentioned; also a piece of land on the easterly side of said river, opposite the dam, extending six rods above and six rods below said dam, and four rods wide from said river. By the above it is intended to include all the estate and privileges which were conveyed to me by Joseph Bodwell, by deed dated August 1st, 1825, recorded in the Registry of Deeds, September 9th, 1825, b. 239, l. 205. Also, another piece of land containing four acres, bounded as follows, viz.: beginning at Spicket river bridge, thence

westerly by said river thirty-seven and a half rods to a stake and stones by land formerly of Isaac Bodwell, thence southerly by land formerly of said Isaac about twenty-three rods to a stake and stones, thence easterly by land formerly of said Isaac fourteen rods to the road, thence northerly by said road forty-two and a half rods to the bounds first mentioned, being the same that was conveyed to me by Isaac Bodwell, by deed dated Oct. 27th, 1825, recorded in the Registry of Deeds, Dec. 8th, 1825, b. 240, l. 22. Also, another piece of land adjoining the last described piece, bounded as follows, viz.: beginning at a stake and stones at Spicket river by the last described land, thence southerly by land formerly of said Isaac about thirty-five rods and eight-tenths of a rod to a stake and stones, thence southwesterly eleven rods and three-tenths to the road, thence northerly by said road to my own land above described, thence westerly and northerly by my said land to the bounds first mentioned, being the same parcel, containing one acre and seventy rods, that was conveyed to me by said Isaac Bodwell, by deed dated March 2d, 1826, recorded in the Registry of Deeds, Mar. 11th, 1826, book 240, l. 121: To have and to hold the afore-granted premises to the said Abigail Bodwell, her heirs and assigns, to her and their use and behoof forever. And I, for myself, my heirs, executors and administrators, do covenant with the said Abigail, her heirs and assigns, that I am lawfully seized in fee of the afore-granted premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said Abigail. And that I, for myself, my heirs, executors and administrators, will warrant and defend the same premises to the said Abigail, her heirs and assigns forever, against the lawful claims and demands of all persons. Provided, nevertheless, that if the said Adolphus Durant, his heirs, executors or administrators, pay to the said Abigail Durant, her heirs, executors, administrators or assigns, the sum of one thousand dollars on demand, then this deed, as also a certain promissory note, bearing even date with these presents, given by the said Adolphus to the said Abigail, to pay the same sum and interest at the time aforesaid, shall both be void; otherwise shall remain in full force.

In witness whereof, I, the said Adolphus Durant, have hereunto set my hand and seal, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and thirty-four.

ADOLPHUS DURANT,
MARIA C. DURANT.

Signed, sealed and delivered in presence of us,
JOHN WILSON,
JOHN TENNEY.

ESSEX, *ss.* February 24th, 1834. Then the above-named Adolphus Durant acknowledged the above instrument to be his free act and deed; before me,

JOHN TENNEY, *Just. Peace.*

Essex, ss. Received in Registry of Deeds, March 17, 1834. Recorded book 273, leaf 253, and examined by

R. H. FRENCH, *Register.*

Assignment to Edward S. Rand et al.

Know all men by these presents, that I, Abigail Durant, of Newton, within named, in consideration of twelve hundred and seventy dollars, being the amount of the principal and interest due on the sum loaned on the security of the within mortgage-deed and note of Adolphus Durant, within named, received of Edward S. Rand and Charles S. Storrow, of Boston, in the county of Suffolk, in the Commonwealth of Massachusetts, Esquires, trustees, for the use of the Essex Company, do hereby sell, convey, transfer and assign to the said Rand and Storrow, their heirs and assigns, and to the survivor of them, and his heirs and assigns, all my right, interest and estate in and to the premises described in the within mortgage-deed; and I do hereby also assign my claim and title in and to the note of the said Adolphus Durant, given on the day of the date of the within deed, and mentioned therein, to the said Rand and Storrow, for their use and benefit as aforesaid forever: To have and to hold said mortgaged and within described premises to the said Rand and Storrow, and their heirs and assigns, free and clear from any claim or demand made from, by or under me.

In witness whereof, I, the said Abigail Durant, have hereunto set my hand and seal, this twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-five.

ABIGAIL DURANT.

Signed, sealed and delivered in presence of us,
Stephen Barker.

Commonwealth of Massachusetts, *Essex, ss.* May 21st, 1845. Personally appeared the above-named Abigail Durant, and acknowledged the above assignment to be her free act and deed. Before me,

STEPHEN BARKER, *Just. Peace.*

Essex, ss. Received May 22d, 1845. Recorded in book 254, leaf 11, and examined by

R. H. FRENCH, *Register.*

Assigned to Essex Company.

Know all men by these presents, that we, Edward S. Rand and Charles S. Storrow, the assignees of the within written mortgages, in consideration of one dollar, and for other good considerations, to us paid by the Essex Company, a corporation established by authority of the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby sell, transfer, assign and convey unto the said Essex Company, its successors and assigns, the lands and tenements within described and conveyed, and all our right, title, interest and estate in and

to the same, together with the promissory note within mentioned, and the debt secured thereby: To have and to hold the same to the said Essex Company, its successors and assigns, to its and their own use forever.

In witness whereof, we, the said Edward S. Rand and Charles S. Storrow, have hereunto set our hands and seals this seventh day of June, in the year eighteen hundred and forty-five.

EDWARD S. RAND,
CHAS. S. STORROW.

Executed and delivered in presence of us,

ALEX. C. WASHBURN,
FRANCIS B. HAYES.

COMMONWEALTH of MASSACHUSETTS, *Suffolk, ss.* June 7, A. D. 1845. Personally appeared the above-named E. S. Rand and C. S. Storrow, and acknowledged the foregoing instrument to be their free act and deed. Before me,

FRANCIS B. HAYES, *Justice of the Peace.*

ESSEX, *ss.* Received June 9th, 1845. Recorded book 353, leaf 241, and examined by

R. H. FRENCH, *Register.*

S. Lawrence et al. to Ed. S. Rand et al.

Know all men by these presents, that we, Samuel Lawrence and John Nesmith, of Lowell in the county of Middlesex, and Daniel Saunders, of Andover in the county of Essex, manufacturers, in consideration of seventeen thousand nine hundred and ninety-two and $\frac{81}{100}$ dollars to us paid by Edward S. Rand and Charles S. Storrow, of Boston, county Suffolk, Esquires, the receipt whereof is hereby acknowledged, and of other good and sufficient considerations, have granted, remised, released and forever quit-claimed, and by these presents do grant, remise, release and forever quit-claim unto the said Rand and Storrow all the lands, tenements, messuages and estates, with their appurtenances, mentioned and described in certain deeds thereof respectively made to us, and recorded in the Registry of Deeds for the county of Essex, namely:

One deed by Phineas Stevens and Kimball J. Dike to us, dated February 4th, A. D. 1845; recorded March 21st, A. D. 1845.

One deed, Mary W. Stevens to us, dated the twenty-fifth, and recorded the twenty-seventh day of March, A. D. 1845.

One deed, Moody Bridges to us, dated the twenty-sixth, and recorded the thirty-first day of March, A. D. 1845.

One deed, Thomas C. Foster to us, dated the first, and recorded the thirty-first day of March, A. D. 1845.

One deed, Amos Adams to us, dated the twenty-eighth, and recorded the thirty-first day of March, A. D. 1845.

One deed, Nicholas Noyes to us, dated the twenty-eighth, and recorded the thirty-first day of March, A. D. 1845.

One deed, Daniel A. White to us, dated and recorded March twenty-eighth, 1845.

One deed, Stephen Barker us, dated the twenty-sixth, and recorded the twenty-seventh day of March, A. D. 1845.

One deed, Daniel K. Peters to us, dated the third day of March, recorded the twenty-first day of March last.

One deed of the inhabitants of Methuen to us, dated the eleventh day of November last, and recorded the twenty-first day of March last.

To all which deeds, or the record thereof, reference is hereby made for a more full description of the lands hereby intended to be conveyed: To have and to hold to them, the said Rand and Storrow forever, jointly, as joint-tenants, and to the survivor of them, and the heirs and assigns of such survivor. But in strict trust, nevertheless, and for the purpose following, viz.: that when a certain company called the Essex Company, incorporated by act of eighteen hundred and forty-five, shall be duly organized, so as to be capable of taking and holding real estate, according to the provisions of the act of incorporation, they, the said Edward S. Rand and Charles S. Storrow, or the survivor of them, or the heirs of such survivor, shall, on demand, by good and sufficient deed, convey to said company all the lands and their appurtenances hereby conveyed to them, the said Rand and Storrow, free of all incumbrances made or suffered by them, to hold to said company their successors and assigns, in fee forever.

And we the the said Lawrence, Nesmith and Saunders, do covenant with the said Rand and Storrow, and their assigns, that the premises are free of all incumbrances made or suffered by us, respectively, and that we will severally warrant and defend the same against the lawful claims of all persons claiming by, through or under us respectively.

In testimony whereof, we, the said Samuel Lawrence, John Nesmith, and Daniel Saunders, together with Alison, wife of said Samuel, Harriet, wife of said John, and Phebe F., wife of said Daniel, who herey severally release all claim or right of dower in the premises, have hereunto set our hands and seals, this first day of April, in the year eighteen hundred and forty-five.

SAM. LAWRENCE,
JOHN NESMITH,
HARRIETE NESMITH,
DANIEL SAUNDERS,
ALISON LAWRENCE,
PHEBE F. SAUNDERS.

Signed, sealed and delivered in presence of us—the words "their heirs and assigns" being first erased:

THOS. HOPKINSON, H. D. PHELPS, } by S. L., J. N. and D. S.

D. SAUNDERS, witness to H. N., A. L., P. F. S.

MIDDLESEX, *ss.* April 4th, A. D. 1845. Then appeared the within named Samuel Lawrence, John Nesmith and Daniel Saunders, and acknowledged the foregoing to be their free act and deed. Before me,

HENRY D. PHELPS, *Justice of the Peace.*

ESSEX, *ss.* Received April 5, 1845, 15 m. before 4 p. m. Recorded book 353, leaf 85, and examined by

R. H. FRENCH, *Register.*

Adolphus Durant to Joseph Foster.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, and Commonwealth of Massachusetts, paper-maker, in consideration of five thousand dollars to me paid by Joseph Foster, of Newton, in the county of Middlesex, paper-maker, and Seth Dewing, of Boston, in the county of Suffolk, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell and convey unto the said Foster and Dewing, their heirs and assigns forever, the following described land, with all the buildings thereon, being all the real estate whereof I am the owner and possessor, in the town of Methuen aforesaid, to wit: one piece containing eight acres, more or less, bounded as follows, viz.: beginning at a stake and stones by the road, thence easterly to Spicket river, thence *thence* on the westerly side of said river ten rods to a stake and stones by said river, thence across said river to the easterly side, thence northerly and westerly up by said river, and including the same to the bridge, thence southerly by the road to the bounds first mentioned. Also a piece of land on the easterly side of said river opposite the dam, extending six rods above and six rods below the dam, and four rods wide from the said river. By the above it is intended to include all the estate and privileges which were conveyed to me by Joseph Bodwell, by deed dated August 1st, 1825, recorded Sep. 9th, 1825, b. 239, l. 205. Also another piece of land containing four acres, bounded as follows, viz.: beginning at Spicket river bridge, thence westerly by said river thirty-seven and a half rods to a stake and stones by land formerly of Isaac Bodwell, thence southerly by land formerly of Isaac Bodwell about twenty-three rods to a stake and stones, thence easterly by land formerly of said Isaac fourteen rods to the road, thence northerly by said road forty-two and a half rods to the bounds first mentioned, being the same that was conveyed to me by said Isaac Bodwell, by deed dated October 27th, 1825, recorded December 8th, 1825, b. 240, l. 22. Also another piece of land adjoining the last described piece,

bounded as follows, viz.: beginning at a stake and stones at Spicket river by the last described land, thence southerly by land formerly of said Isaac about thirty-five rods and eight-tenths of a rod to a stake and stones, thence southeasterly eleven rods and three-tenths to the road, thence northerly by said road to my own land above described, thence westerly and northerly by my said land to the bounds first mentioned, containing one acre and seventy rods, and is the same that was conveyed to me by said Isaac Bodwell, by deed dated March 2d, 1826, recorded March 11th, 1826, b. 240, l. 121: To have and to hold the afore-granted premises to the said Foster and Dewing, their heirs and assigns, to their use and behoof forever. And I, for myself, my heirs, executors and administrators, do covenant with the said Foster and Dewing, their heirs and assigns, that I am lawfully seized in fee of the afore-granted premises, that they are free of all incumbrances: that I have good right to sell and convey the same to the said Foster and Dewing. And that I, for myself, my heirs, executors and administrators, will warrant and defend the same premises to the said Foster and Dewing, their heirs and assigns forever, against the lawful claims and demands of all persons. Provided, nevertheless, that if the said Adolphus Durant, his heirs, executors or administrators, pay to the said Joseph Foster and Seth Dewing, their heirs, executors, administrators or assigns, the sum of five thousand dollars on demand, then this deed, as also a certain promissory note bearing even date with these presents, given by the said Durant to the said Foster and Dewing, to pay the same sum and interest at the time aforesaid, shall both be void, otherwise shall remain in full force.

In witness whereof, I, the said Adolphus Durant, and Maria Durant, wife of said Adolphus, who hereby relinquishes her right of dower in the premises, have hereunto set our hands and seals this twenty-ninth day of February, in the year of our Lord one thousand eight hundred and thirty-six.

ADOLPHUS DURANT, [SEAL.]
MARIA DURANT. [SEAL.]

Signed, sealed and delivered in presence of us,
BENJA. SIMPSON,
MARY C. BIRD.

ESSEX, *ss.* February 29th, 1836. Then the above-named Adolphus Durant acknowledged the above instrument to be his free act and deed. Before me,

JOHN TENNEY, *Just. of Peace.*

ESSEX, *ss.* Received March 5th, 1836. Recorded and examined by
R. H. FRENCH, *Register.*

ESSEX. Register of Deeds, 23d July, 1851. The foregoing is a true copy of record in this office. Attest,
EPHRAIM BROWN, JR., *Register.*

[REC. CXXV, D. T., 1855.]—41

Joseph Foster et al. to Charlestown Bank.

(Copy, B. 300, L. 150.)

Know all men by these presents, that we, Joseph Foster and Seth Dewing, the within named, in consideration of five thousand dollars to us paid by the President, Directors and Company of the Charlestown Bank, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and convey to the said President, Directors and Company of the Charlestown Bank all our right, title and interest in and to the within described mortgaged premises, hereby intending to convey to the President, Directors and Company of the Charlestown Bank, their successors and assigns, all the interest we have acquired in the within described premises by virtue of the within mortgage to us, as well as any interest that we may otherwise have: To have and to hold the within described premises to the President, Directors and Company of the Charlestown Bank, their successors and assigns forever; and we hereby covenant with the said President, Directors and Company of the Charlestown Bank, that we have not done or suffered any incumbrance on the within described premises since the date of the within deed.

In witness whereof, we, the said Joseph Foster and Seth Dewing, have hereunto set our hands and seals this nineteenth day of May, A. D. eighteen hundred and thirty-six.

JOSEPH FOSTER, [SEAL.]
SETH DEWING. [SEAL.]

Executed in presence of
SAMUEL WELTCH.
GEORGE WM. OTIS.

SUFFOLK, *ss.* Boston June 10, 1836. Then the above-named Joseph Foster and Seth Dewing acknowledged the above instrument to be their free act and deed. Before me,

GEORGE WM. OTIS, *Justice of the Peace.*

ESSEX, *ss.* Received May 10, 1837. Recorded and examined by
R. H. FRENCH, *Register.*

ESSEX. Registry of Deeds, 23d July, 1851. The foregoing is a true copy of record in this office. Attest,

EPHM. BROWN, JR., *Register.*

Charlestown Bank to Samuel Hubbard & al., Trustees.

(Copy, B. 311, L. 113.)

Know all men by these presents, that the President, Directors and Company of the Charlestown Bank, in consideration of one dollar to them paid by Samuel Hubbard, Benjamin D. Greene and William P. Greene, trustees under the will of Gardiner Greene of Boston, do

hereby assign and transfer unto the said trustees the deed of mortgage of Adolphus Durant to Joseph Foster and Seth Dewing, dated February 29, A. D. 1836, and recorded with Essex deeds, book 287, f. 250, and by said Foster and Dewing assigned to said Bank, May 19, 1836, recorded book 300, f. 150, reference being had to said deed herewith, together with the promissory note for $5,000 secured by said mortgage, and all our right and title in the same, and in the land, mills and mill privileges therein described, which note and deeds are herewith delivered to said trustees; and for the like consideration, the undersigned Joseph Foster, to whom the said Seth Dewing assigned his interest in the premises by his deed dated January 5, 1839, recorded book 310, f. 162, release and transfer his right and interest in the premises to the said trustees: To have and to hold the same unto the said Samuel Hubbard and others, trustees, and their heirs and assigns, to their use forever.

In testimony whereof, the said President, Directors and Company of the Charlestown Bank, by their cashier, and also the said Foster, execute these presents on this first day of March, A. D. 1839.

JOHN HARRIS, *Cashier*, [SEAL.]
JOSEPH FOSTER. [SEAL.]

Signed, sealed and delivered in presence of us,
CHAS. ATWOOD.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss.* 1st March, 1839. Then John Harris, Cashier of Charlestown Bank, and Joseph Foster, above named, personally appeared and acknowledged the foregoing to be their free act and deed. Before me,

PAUL WILLARD, *Jus. Pacis.*

ESSEX, *ss.* Received March 4, 1839, five minutes before 9 o'clock a. m. Recorded and examined by

R. H. FRENCH, *Register.*

ESSEX. Registry of Deeds, 23d July, 1851. The foregoing is a true copy of record in this office. Attest,

EPHM. BROWN, JR., *Register.*

Samuel Hubbard & al., Trustees, vs. *Adolphus Durant.*

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

At the court of common pleas, begun and held at Salem, within and for the county of Essex, on the third Monday (21st day) of March, in the year one thousand eight hundred and forty-two:

Samuel Hubbard and Benjamin D. Greene, of Boston, in the county of Suffolk, and William P. Greene, of Norwich, in the State of Connecticut, gentlemen, trustees under the will of Gardiner Greene, late of said Boston, deceased, plaintiffs, against Adolphus Durant of Methuen,

in the county of Essex, paper-manufacturer, defendant, in a plea of land, wherein the plaintiffs demand against said Durant the following described land, with all the buildings, privileges and appurtenances, situated in said Methuen: one piece containing eight acres, more or less, bounded as follows, viz.: beginning at a stake and stones by the road, thence easterly to Spicket river, thence on the westerly side of said river ten rods to a stake and stones by said river, thence across said river to the easterly side, thence northerly and westerly up by said river, and including the same to the bridge, thence southerly by the road to the bounds first mentioned. Also a piece of land on the easterly side of said river opposite the dam, extending six rods above and six rods below the dam, and four rods wide from the said river, (being all conveyed to said Durant by Joseph Bodwell by deed August 1, 1825, recorded with Essex deeds, book 239, leaf 205.) Also another piece containing four acres, bounded as follows, viz.: beginning at Spicket river bridge, thence westerly by said river thirty-seven and a half rods to a stake and stones by land formerly of Isaac Bodwell, thence souther by land formerly of Isaac Bodwell about twenty-three rods to a stake and stones, thence easterly by land formerly of said Isaac fourteen rods to the road, thence northerly by said road forty-two and a half rods to the bounds first mentioned, (being the whole conveyed to said Durant by Isaac Bodwell by deed October 27, 1825, recorded book 240, leaf 22.) Also another piece adjoining the last described piece, bounded as follows, viz.: beginning at a stake and stones at Spicket river by the last described land, thence southerly by land formerly of said Isaac about thirty-five rods and eight-tenths of a rod to a stake and stones, thence southeasterly eleven rods and three-tenths to the road, thence northerly by said road to land above described, thence westerly and northerly by said land to the bounds first mentioned, containing one acre and seventy rods, being all conveyed by Isaac Bodwell to said Durant by deed March 2d, 1826, recorded book 240, leaf 121.) Whereof the said Durant, unjustly and without judgment, disseized them, the said demandants, within ten years now last past. Whereupon the said demandants say that they were seized of the demanded premises, with the appurtenances, in the demesne, as of fee and in mortgage within ten years now past, and the said Durant disseized them thereof, and still unjustly withholds the same, to the damage of the plaintiffs five thousand dollars.

This action was entered at June term, 1841, and continued until this term. And now, after a full hearing, the cause is committed to a jury sworn to try the same, who return their verdict therein as follows, viz.: "The jury find that the tenant did disseize the demandants in manner and form as they have thereof declared against him; and they further find, that the tenant is indebted to the demandants on the note secured by the mortgage in the sum of three thousand five hundred and eighty-five dollars and three cents." It is therefore considered by the court, that if the defendant shall, within two months after this judgment, pay to the plaintiffs $3,585 03, being the sum found due on the mortgage,

with interest and costs of suit, taxed at $43 03, the mortgage shall be void, and the defendant shall hold the premises discharged thereof; otherwise the plaintiffs shall have their execution for possession of the premises and for costs of suit. Judgment entered April 14. Hab. fac. poss., June 20.

Attest: E. SHILLABER, *Clerk.*

THE COMMONWEALTH OF MASSACHUSETTS,
Essex, ss:

To all people to whom these presents shall come, I, Asahel Huntington, clerk of the court aforesaid, do certify that the foregoing is a true copy of record.

In testimony whereof, I hereunto set my hand, and affix the seal of said court at Salem, in the county of Essex aforesaid, on this twenty-third day of July, in the year of our Lord one thousand eight hundred and fifty-one.

A. HUNTINGTON, *Clerk.*

Hubbard & als. vs. *Durant.*

[L. S.] COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

To the Sheriff of our county of Essex, or his deputy, greeting:

Whereas Samuel Hubbard and Benjamin D. Greene of Boston, within our county of Suffolk, and William P. Greene of Norwich, in the State of Connecticut, gentlemen, trustees under the will of Gardiner Greene, late of said Boston, deceased, before our justices of our court of common pleas, holden for and within our county of Essex aforesaid, at Salem, upon the third Monday of March, A. D. 1842, by the consideration of our said court recovered judgment for their title and possession of and in the following described land, with all the buildings, privileges and appurtenances, situated in Methuen, in the county of Essex: one piece containing eight acres, more or less, bounded as follows, viz.: beginning at a stake and stones by the road, thence easterly to Spicket river, thence on the westerly side of said river ten rods to a stake and stones by said river, thence across said river to the easterly side, thence northerly and westerly up by said river and including the same to the bridge, thence southerly by the road to the bounds first mentioned. Also a piece of land on the easterly side of said river, opposite the dam, extending six rods above and six rods below the dam, and four rods wide from the said river, (being all conveyed to Adolphus Durant by Joseph Bodwell by deed August 1, 1825, recorded with Essex deeds, b. 239, l. 205.) Also another piece containing four acres, bounded as follows, viz.: beginning at Spicket river bridge, thence westerly by said river thirty-seven and a half rods to a stake and stones by land formerly of Isaac Bodwell, thence southerly by land formerly of Isaac Bodwell about twenty-three

rods to a stake and stones, thence easterly by land formerly of said Isaac fourteen rods to the road, thence northerly by said road forty-two and a half rods to the bounds first mentioned, (being the whole conveyed to said Durant by Isaac Bodwell by deed October 27, 1835, recorded b. 240, l. 22. Also another piece adjoining the last described piece, bounded as follows viz.: beginning at a stake and stones at Spicket river by the last described land, thence southerly by land formerly of said Isaac about thirty-five rods eight-tenths to a stake and stones, thence southeasterly eleven rods and three-tenths to the road, thence northerly by said road to land above described, thence westerly and northerly by said land to the bounds first mentioned, containing one acre and seventy rods, (being all conveyed by Isaac Bodwell to said Durant, by deed March 1, 1826, recorded b. 240, l. 121;) against Adolphus Durant of Methuen, in the county of Essex, paper manufacturer, who had unjustly withheld, put out, or amoved the said demandants from their possession thereof; and also, at the said court, recovered judgment for the sum of forty-three dollars three cents for costs and damages, which they sustained by reason of the same, as to us hath been made to appear of record: We command you, therefore, that, without delay, you cause the said demandants to have possession of and in the said messuage or tenement with the appurtenances. We also command you, that of the goods, chattels, or lands of the said tenant within your precinct, at the value thereof in money, you cause the said demandants to be paid and satisfied the aforesaid sum of $43 03, which to the said demandants was adjudged for their costs and damages, with forty cents more for this writ, and thereof also to satisfy yourself for your own fees. And for want of such goods, chattels or lands of the said tenant to be by him shown unto you, or found within your precinct, to the acceptance of the said demandants to satisfy the aforesaid sums, we command you to take the body of the said tenant and him commit unto our jail in Salem, Ipswich, or Newburyport, in our county of Essex aforesaid, and detain in your custody within our said jail until he pay the full sums above mentioned, with your fees, or that he be discharged by the said demandants or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein, into our said court of common pleas, to be holden at Newburyport, within and for our county of Essex, on the third Monday of September next.

Witness, John M. Williams, esq., at Salem, the twentieth day of June, in the year of our Lord one thousand eight hundred and forty-two.

E. SHILLABER, *Clerk.*

A true copy. Attest:

E. SHILLABER, *Clerk.*

Essex, *ss.* July 6, 1842. By virtue of this writ I have this day caused the within-named demandants to have possession of and in the

messuages and tenements within described, with the appurtenances, by delivering possession thereof to John Tenney, esq., attorney for the within-named demandants, and I return the within precept unsatisfied as to costs.

JOSHUA BUSWELL,
D. Sheriff.

A true copy. Attest:

E. SHILLABER, *Clerk.*

Judgment.—Foster & al. vs. *Durant.*

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

At the Supreme Judicial Court, begun and holden at Salem, within and for the county of Essex, on the first Tuesday, being the sixth day of November, in the year one thousand eight hundred and forty-nine:

79.—*Foster & al.* vs. *Durant.*

Joseph Foster, of Newton, in the county of Middlesex, paper-maker, and Seth Dewing, of Needham, in the county of Norfolk, yeoman, plaintiffs, against Adolphus Durant of Lawrence, otherwise of Methuen, in the county of Essex, paper manufacturer, defendant in a plea of debt, for that the said Adolphus Durant on the eleventh day of August, A. D. 1842, at said Methuen, by his writing obligatory of that date, sealed with his seal, and here in court to be produced, bound and acknowledged himself to be indebted to plaintiffs in the sum of ten thousand dollars, to be paid to the plaintiffs on demand. Yet, though requested, the said Adolphus Durant hath never paid the same to plaintiffs, but detains it, to the damage of the said plaintiffs, as they say, the sum of ten thousand dollars.

This action was entered at November term, 1847, and continued until this term. And now upon the facts agreed by the parties, it is considered by the court that judgment be entered for the plaintiffs; and that said plaintiffs recover against said defendant seventy-nine hundred ninety-two dollars and thirty-four cents damage, and costs of suit taxed at twenty-one dollars and eight cents.

Ex'on, December 22.

THE COMMONWEALTH OF MASSACHUSETTS, *Essex, ss.* To all people to whom these presents shall come: I, Asahel Huntington, clerk of the court aforesaid, do certify that the foregoing is a true copy of record.

In testimony whereof, I hereunto set my hand, and affix the seal of said court, at Salem, in the county of Essex aforesaid, on this sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty-one.

A. HUNTINGTON, *Clerk.*

Award.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

BOSTON, *April 27th, A. D.* 1843.

The subscribers, appointed arbitrators as before mentioned, having given due notice to the parties respectively of the time and place of hearing, and having on several different days carefully heard and considered the statements, evidence, proofs, and allegations offered and made by the respective parties, do award and determine, that the said Joseph Foster and Seth Dewing have and recover of the said Adolphus Durant the sum of five thousand nine hundred and ninety-six dollars and thirty-seven cents, together with costs of court, taxed according to law. The costs of arbitration taxed as follows, viz: fee of arbitrators, thirty dollars each, amounting to ninety dollars. To Mr. George Rogers, for long-continued services as auditor, is allowed the sum of $270, the one-half of which sum, viz: one hundred and thirty-five dollars, and also one-half of the arbitrators' fees, viz: forty-five dollars, to be paid by said Adolphus Durant. This award to be entered at the present term of the court of common pleas now held at said Boston, within and for said county of Suffolk. Judgment to be entered and execution to issue accordingly.

JAMES C. MERRILL,
E. P. TILESTON,
MOSES GRANT.

A true copy.—Attest:

A. HUNTINGTON, *Clerk.*

Tenney Agreement.

1842, Feb'y 7th. Rec'd of A. Durant his promissory note for fifteen hundred dollars, dated Jan'y 27th, 1842, with mortgages to secure the same on real and personal property: said note was given to me by said Durant to secure me as endorser or surety for him and for all liabilities for him of every description, and for all moneys lent him by me, and for all sums due me from him, either by note or account.

JOHN TENNEY.

(Copy.)

Durant to Dewing.

Know all men by these presents, that I, Adolphus Durant, of Methuen, in the county of Essex, and commonwealth of Massachusetts, in consideration of the sum of thirty-five hundred dollars to me paid by Seth Dewing, of Boston, in the county of Suffolk, the receipt whereof is hereby acknowledged, have bargained, sold and delivered, and by these presents do bargain, sell and deliver unto the said Dewing one machine and drier for making paper, called a Ferdrier machine, now situated in the paper-mill occupied by me in Methuen aforesaid:

To have and to hold the said machine to him the said Dewing, his executors, administrators and assigns, to his and their use and behoof forever. Provided, nevertheless, that if I, the said Durant, or my executors or administrators, shall pay to the said Dewing, his executors, administrators or assigns, said sum of thirty-five hundred dollars, in the following manner, to wit: One-half thereof in six months from date; one-fourth in nine months from date; and the remaining one-fourth in twelve months from date, with legal interest on all of said sums; then this deed shall be void, otherwise shall remain in full force and virtue.

ADOLPHUS DURANT. [SEAL.]

Signed, sealed and delivered in presence of
JOHN TENNEY.

A true copy.—Attest:

JOSIAH DEARBORN, *Town Clerk*.

Recorded in the book of records for the town of Methuen.

MOSES MERRILL, 3, *Clerk*.

A. Durant to Seth Dewing.

Know all men by these presents, that I, Adolphus Durant, of Methuen, paper-maker, in consideration of six hundred to me paid by Seth Dewing, of Boston, paper-maker, the receipt whereof is hereby acknowledged, do hereby sell and convey unto the said Dewing the following described personal property, to wit: one bay mare, one chaise and harness, one iron kettle, 170 gallons potash, five beds, bedsteads and bedding, 2 looking-glasses, two dozen chairs, one bureau, one thousand hanging pools: To have and to hold the same to the said Seth. Provided, nevertheless, that if the said Adolphus shall pay to the said Seth the said sum of six hundred dollars on demand, with interest, then this deed to be void, otherwise to remain in full force.

In witness whereof, I, the said Durant, have hereunto set my hand and seal this twenty-sixth day of November, A. D. 1836.

ADOLPHUS DURANT. [SEAL.]

In presence of
N. W. HAZEN.

A true copy.—Attest:

JOSIAH DEARBORN, *Town Clerk*.

To Adolphus Durant and Stephen Barker, both of Methuen, in the county of Essex:

You will please to take notice of my intention to foreclose the mortgage of one machine and drier for making paper, called a Foudrinier machine, in the paper-mill now or lately occupied by said Durant, dated and recorded May 11, 1837, in the town records of said Methuen,

and made by said Durant to Seth Dewing, to secure the payment of the sum of thirty-five hundred dollars and interest by said Durant to said Dewing.

JOSEPH FOSTER,
For SETH DEWING.

Methuen, May 13th, 1844.

MAY 14, 1844.

I hereby certify that I have this day served the within notice on the within-named Adolphus Durant and Stephen Barker, by leaving a true copy of the same at each of their last and usual places of abode in Methuen. JACOB HOW.

A true copy.—Attest:

JOSIAH DEARBORN, *Town Clerk.*

Know all men by these presents, that I, Seth Dewing, in consideration of five dollars to me paid by Robert Farley, esq., the receipt of which I do hereby acknowledge, I do hereby assign, transfer, sell and convey all my interest in the within described machine, and all my rights growing out of the within mortgage, to the said Farley, or his assigns, to their sole use: to have and to hold the property within described to said Farley, to his heirs and assigns, forever.

In whereof I have this day hereunto set my hand and seal.
SETH DEWING. [SEAL.]

Boston, April 30, 1845.

Witnessed by
AMOS LYON.

A true copy.—Attest:

JOSIAH DEARBORN, *Town Clerk.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*
Court of Common Pleas.

JOSEPH FOSTER AND ANOTHER
vs.
ADOLPHUS DURANT.

46 day (May 30.) Entered return of submission.

50 day (June 3.) By the court. "The submission does not pursue the directions of the statute, and no judgment can be rendered on the award, this court having no jurisdiction."

Record from the docket of the April term, A. D. eighteen hundred and forty-three, in the above entitled action.

Attest: JOSEPH WILLARD, *Clerk.*

It is agreed, that the within may be deemed to be included in the exhibits heretofore in the case of Durant & al. *v.* Lawrence.

C. E. RIPLEY.

U. S. CIRCUIT COURT.—Oct. T. 1852.

DURANT
v.
LAWRENCE & al.

It is agreed by the parties, that the several deeds, copies of record, and papers hereinafter specified, or any of them, may be printed, at the pleasure of either party, and may be, whether printed or not, referred to at the hearing by either party, as if the same had been proved and identified; but nothing in this agreement contained shall be construed so as in any way to affect whatever questions may exist or arise as to the admissibility of the said documents, or the effect thereof, as evidence in the said cause.

April 1, 1845.	S. Lawrence & al. to E. S. Rand & al. Deed.
July 3, 1830.	A. Durant to Mercantile Bank. Mortgage.
May 22, 1845.	Mercantile B'k to E. S. Rand & al. Assign't of do.
June 7, 1845.	E. S. Rand & al. to Essex Co. Assignment of do.
Feb. 29, 1836.	A. Durant to J. Foster & al. Mortgage.
May 19, 1836.	J. Foster & al. to Charlestown Bank. Asssignment of do.
March 1, 1839.	Charlestown B'k to S. Hubbard & al. "
April 14, 1842.	Record of judgment on said mortgage, S. Hubbard & al. *vs.* A. Durant.
Sept. 1842.	*Habere facias* on said judgment, and return of possession thereon delivered.
June 24, 1845.	Bill to redeem from said mortgage Essex Co. *vs.* Farley, Foster & Dewing.
	Answer (amended) of said Farley, Foster & Dewing, to said bill. Essex S. J. C. Spring Term, 1846.
Aug. 11, 1842.	Submission to referees, between Foster and Dewing, and A. Durant.

The following bills, filed by the parties, of their respective accounts, under the said submission, (the respondents not admitting that no other bills were filed.)

J. Foster's bill, marked E.
S. Dewing, six bills, marked C. No. 1, 2, 3, 4, 5, 6.
A. Durant, two bills, marked A.

(said several bills being now respectively indorsed with the signature of S. Ames for Plff. and C. G. Ripley for Respondents.)

April 27, 1843.	Award on said submission.
Nov. T. 1849.	Essex S. J. Court, judgment on said award.
Dec. 22, 1849.	Execution issued on said judgment, and return thereon.

Jan. 31, 1850. Deed, M. Bridges, D'y Sheriff to J. Foster, of equity of redemption, taken on said execution.
Essex S. J. Court. Writ of entry, J. Foster *v.* A. Durant, and pleadings thereon.
Record of proceedings in insolvency, A. Durant's case.
May 1, 1842. Contract. A. Durant & Mass. Cotton Mills—Bills for waste delivered under said contract, viz.: 1842, May 31, July 1, Aug. 3, Aug. 10, Sept. 10, Oct. 13, Nov. 11.
1843, Feb. 10, April 6, May 9, June 7, June 27, July 21.
Oct. 19, 1844. Lease, A. Durant to A. B. Mudge & Co.
Feb. 7, 1842. Receipt, J. Tenney to A. Durant.
Notes indorsed by J. Tenney for Durant, viz.: 1841, March 27, June 15. 1842, Feb. 7, March 14, Nov. 11, Nov. 18, Dec. 5, Dec. 12, Dec. 23.

C. G. RIPLEY,
For Respondents.
SAMUEL AVERY,
For Compl't.

Feb'y 11, 1853.

CIRCUIT COURT OF THE U. S.,
District of Massachusetts.

DURANT
vs.
LAWRENCE & al.

The respondents agree that the complainant may file and print abstracts of the several bills filed with J. Tenney, under the submission between Durant, Foster, and Dewing, and which bills are included in the agreement between the parties, dated Feb. 11, 1853, the respondents not waiving hereby any objection to the admissibility of such evidence, but reserving, in respect thereof, all the rights reserved by said agreement with respect to said several bills, and not admitting hereby the correctness of any such abstracts.

C. G. RIPLEY, *for Respondents.*

Aug. 24, 1854.

(*Abstract C.*)

Mr. Foster renders to the referees an even account of debit and credit.

The auditor makes Foster owe the A. Durant & Co. $1,570 28

(*Abstract D.*)

A. Durant & Co. in acc. with Seth Dewing, Dr.

1836.	Dec. 31.	For balance of acc. as rendered to referees, see paper marked C, No. 1,.....	$4,609 42	
1837.	May 24.	For balance of acc. as rendered to referees, see paper marked C, No. 2.....	2,284 79	
"	Dec. 20.	For balance of acc. as rendered to referees, see paper marked C, No. 3.....	7,128 44	
1838.	June 30.	For balance of acc. as rendered to referees, see paper marked C, No. 4.....	1,182 01	
			$15,204 66	$15,204 66

Contra Cr.

1838.	Dec. 28.	By balance of acc. as rendered to referees, see paper marked C, No. 5.....	$561 63	
1839.	July.	By balance of acc. as rendered to referees, see paper marked C, No. 6.....	745 45	
				1,307 08
				$13,897 58
		The auditor makes the company owe Mr. Dewing.....	$13,484 36	

(*Abstract E.*)

A. Durant & Co. in account with A. Durant, Dr.

1837.	Dec.	For bill as rendered to referees, see paper marked A.....	$10,072 36	
		Charge of insurance, not added in the above...	75 00	
"		For bill against Foster & Dewing, rendered to referees, see paper marked A.....	3,453 25	
				$13,600 61
		The auditor, instead of making the company owe Durant the above amount, shows him indebted to the company in the sum of.....	$13,384 57	
				13,384 57
		Durant renders against Co.....	$13,600 61	
		Auditor renders against Durant.....	13,384 57	
		Auditor shows a difference of.....	$26,985 18	

CIRCUIT COURT OF THE U. S.,
District of Massachusetts.

A. DURANT
vs.
S. LAWRENCE & al. } In Equity—May T., 1854.

The respondents protest against the issuing of any commission to take the testimony of Stephen Barker on interrogatories filed by the plaintiff, June 23d, 1854, without notice, and a hearing of the respondents in opposition thereto, the said witness having already testified fully in this cause, in answer to interrogatories filed by said complainant, in relation to all the matters inquired of by the said interrogatories.

By C. G. RIPLEY, *Solicitor.*

July 3d.

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

[L. S.] MASSACHUSETTS DISTRICT, *ss:*

To any Commissioner of the Circuit Court of the United States for the district of Massachusetts:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Stephen Barker, of Methuen, and Charlotte Barker, of Andover, in said district, witnesses to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Adolphus Durant is plaintiff versus Samuel Lawrence and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness while present before you to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this tenth day of July, in the year of our Lord one thousand eight hundred and fifty-four.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE AND OTHERS. } In Equity.

Interrogatories to be proposed to Stephen Barker, of Methuen, in the district aforesaid, in behalf of the complainant.

1. Whether or not, heretofore, you have been examined as a witness in behalf of the complainant, in the above entitled cause?

2. Whether or not, in the negotiations for a sale of an equity of redemption, in relation to which you have testified, you represented to Daniel Saunders, who was the owner of the equity of redemption, which was the subject of negotiation? If so, state fully and particularly what you said to Saunders in respect to such ownership?

3. Whether or not you said anything to said Saunders as to such ownership on more than one occasion? If so, state how many, and whether your representations to him were of the same import at all times; if not, wherein consisted the difference?

4. Whether or not you made to said Saunders any communication in relation to a negotiation with Larkin Thorndike? If so, state the time, as near as you can, at which you first made any such statement, and what you said in this respect?

5. Whether or not, at any time, you said anything to said Saunders as to your own title or ownership of the said equity? If so, state fully and particularly you said to him in this particular.

6. Whether or not you made any statement to the said Saunders in relation to any title or interest of the complainant, Durant, in the equity aforesaid? If so, state what you said in this respect.

7. Whether or not the said Saunders requested you make any application to the complainant, Durant, in relation to the said equity? If so, state what the said Saunders requested you to say or do.

8. Whether or not, at any time, you said to the said Saunders that you were the sole and exclusive owner of the said equity? If so, state fully all you said in this respect.

9. Whether or not you made any agreement with the complainant, Durant, in relation to the aforesaid equity? If so, was such agreement before or after any negotiation in relation thereto with Saunders?

S. BARTLETT, *for Pltff.*

CIRCUIT COURT OF THE U. S.,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & AL. } May T., 1854.

Cross-Interrogatories to Stephen Barker.

The respondent, protesting against the right of the complainant to examine the witness, Stephen Barker, on the interrogatories filed by

the complainant, and reserving all right of objecting thereto as fully as if these cross-interrogatories had not been filed, and objecting to the 2d, 3d, 4th, 5th, 6th, 7th, 8th, and 9th of said interrogatories, as attempts to re-examine his own witness as to matters in relation to which said witness has already fully testified, in answer to interrogatories put to him by said complainant, and also objecting to the 8th interrogatory as leading, nevertheless, proposes the following cross-interrogatories, *de bene esse*, viz:

First. Whether, since the time of your last deposition in this cause, you have not conversed with said Durant, or some, and what, other person, respecting the matters inquired of in the interrogatories of the complainant? If yea, state the whole of said conversation, and the time or times and places thereof. State whether the said Durant, or some other, and what other, person has not, since your last deposition, informed you that Daniel Saunders, one of the respondents, had filed an amended answer, and of the contents, or some, and what portion of the contents thereof? State all, if anything, that said Durant, or any other person, has said or made known to you on this subject.

Second. Have you not, and when, where, and how often, conversed with your sister Charlotte respecting the matters discussed between Saunders and yourself, and Saunders and Durant, and Saunders, Durant, and yourself, in the time of the negotiation for the purchase of the property in question in this suit? If so, state all that has passed between her and yourself in relation thereto?

Third. Do you not know that some other person or persons than yourself, and if so, who, have conversed with said Charlotte on the matter inquired of in the above interrogatory? If yea, what was said by her and said person or persons on the subject?

Fourth. Have you not seen said Durant conversing with her since your said deposition, and when, where, and what was said at any such conversation?

Fifth. Do you not know that said Charlotte has had her recollection called to what she may have overheard said by said Durant, Saunders, and yourself, at the time of said negotiation, or to some, and what part thereof? and where, and by whom, and when?

Sixth. Do you not now know, from information by said Charlotte, or from some, and what other person, what, if anything, the said Charlotte now recollects respecting any thing she may have overheard said by said Durant, Saunders, or yourself, in the course of such negotiation? If so, state all that you are now informed that said Charlotte recollects, and your means of knowledge.

Seventh. Please to examine the rough draft of a bond or agreement between said Durant and Jesse Sargent, annexed to said Durant's answer to a bill of discovery heretofore filed by the Essex Company against him, and now shown to you by the magistrate; and state whether you have ever seen the paper before, or any other paper substantially the same, and in whose hands.

Eighth. Have the interrogatories of the complainant, or these cross-

interrogatories, or either, and which, or the substance thereof, or of either and which, been previously hereto communicated to you, and by whom?

Ninth. Has any person, and if so, who, prior to your examination hereon, intimated any thing, and if so, what, respecting the nature and scope of the interrogatories and cross-interrogatories now propounded to you? Has any person said any thing to you as to what you were to be required to testify about—if so, who, when, and where? and what was said to you, if anything?

Tenth. *If* any thing you may have said in answer to the direct interrogatories, do you mean to add to, qualify, take back, or alter any thing you have heretofore testified on your former examination, in relation to dealings, conversations, and negotiations, between Durant and yourself, Durant, Saunders, and yourself, Saunders and yourself, or Durant and Saunders, respecting the property at Lawrence, which is the subject of this suit? If so, state particularly wherein you mean to add to, qualify, alter, or take back, from your former testimony.

C. G. RIPLEY, *for Def'ts.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & OTHERS. } In Equity.

Interrogatories to be proposed to Miss Charlotte Barker, of Andover, in the said district, in behalf of the Complainant.

1. Whether or not you are acquainted with the complainant, Adolphus Durant?

2. Whether or not you have any acquaintance with Daniel Saunders, of Lawrence, one of the defendants in the above entitled suit?

3. Whether or not, at any time or times, you have heard any conversation by and between the said Saunders and your brother, Stephen Barker, in relation to the sale or purchase of land situate in Lawrence, which was formerly a part of Methuen? If so, state when, where, and how many times you may have heard such conversation; and also, fully and particularly, what was said by said Saunders, and what replies were made to him by your brother.

4. Whether or not, at any time, you have heard any conversation in relation to said land, by and between the said Saunders and Adolphus Durant? If so, state fully and particularly such conversation, and when and where it occurred.

5. Whether or not, at any time, your brother, in your presence and hearing, said anything to said Saunders in relation to any title, or interest of Durant, in or to the above-named land? If so, state fully and particularly what was so said, when and where it was said.

6. Whether or not, the said Saunders, at any time, requested your brother, in your hearing, to make any proposition to, or negotiation with, the said Durant, in relation to said land? If so, state fully what you so heard, and when and where.

S. BARTLETT, *for Pl'ff.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

A. DURANT
vs.
SAMUEL LAWRENCE & al. } May T., 1854.

Cross-interrogatories to Charlotte Barker, a witness to be produced and examined by the Complainant in the above suit.

These respondents, protesting against the right of the complainant to examine the said witness on the interrogatories proposed, and reserving all rights of objection in that behalf, object to the 5th interrogatory as leading, and propose the following cross-interrogatories "*de bene esse*" only:

First. Have you at any time, and how recently, conversed with any person, and whom, respecting any and what of the matters in relation to which you may have testified, in answer to complainant's interrogatories? If yea, state all that has passed between you and such other person in relation thereto.

Second. Have any, and which, of the facts or matters to which you may have testified, been brought to your recollection by any, and what means, and how recently?

Third. Has anything occurred to refresh your memory in relation to any matter as to which you may have testified, as aforesaid, since the happening of such matters? If so, what was it, and how has your memory been refreshed?

Fourth. If, in answer to any of the complainant's interrogatories, you shall have stated any particulars of any conversation or negotiation between the persons mentioned and said interrogatory, as there inquired of, state whether you have not, since the hearing such conversation or negotiation, or parts thereof, to the time of your present examination, said something to some person respecting what you so overheard, or whether some person has not said something to you respecting it? If anything whatever in this behalf has passed between you and any other person, state all that has been said by you, or to you.

Fifth. Has not the inquiry been made of you as to what you could recollect of any such conversation or negotiation? If yea, when, where, and by whom, and state your answer?

Sixth. Have not the conversation or negotiation to which you may have testified, been since discussed, mentioned, or spoken in your presence or hearing, by some person or persons? If so, who were they, and what was said?

Seventh. Whether you were permanently present on the occasion of any conversation to which you may have testified, or only occasionally passing in and out of the room where the same was going on? Specify how much of the time occupied in any and every such conversation you were present, and how great a part thereof was heard by you.

Eighth. If you shall have answered that such communications, or any part thereof, to which you shall have testified, were overheard by you in occasionally passing in and out of the room, whenever they took place, state what enables you, at this distance of time, to recollect parts of conversation casually overheard, and how confident you are of the accuracy of your recollection, in what you may have testified.

Ninth. In anything that you have testified, do you mean to say that you heard any consultation or negotiation between Saunders and Durant, your brother not being present? If yea, when and where was it, and where were they, and where was your brother? State all that was said on such occasion, and how you came to be present.

Tenth. Have these interrogatories and cross-interrogatories, or their substance or import thereof, been communicated to you before your examination; if so, when, and by whom?

By C. G. RIPLEY, *Solicitor for Deft.*

July 5th, 1854.

Stephen Barker, of Methuen, in the State of Massachusetts, of lawful age, having been by me first carefully examined, and cautioned and sworn, deposeth and saith as follows, in answer to the several direct and cross-interrogatories annexed to the preceding commission:

1. In answer to the first interrogatory he saith—I have.

2. In answer to the second interrogatory he saith—I did state to said Saunders all the particulars of the ownership, so far as I knew them at that time. I stated to him, that very soon after his last interview with me, I had made a proposition to Mr. Durant to convey to him, Mr. Durant, or to any other person that he should direct, all my interest in the estate in question, for a certain sum of money, which I had named to Mr. Durant, and that Mr. Durant had then recently applied to me for such conveyance as I had proposed to give him, and requested that the conveyance might be made to Larkin Thorndike, esq., of Salem, who would pay me the sum which I had required for doing so; that in accordance with my agreement with Durant, and at his request, I executed the deed, and sent it to Mr. Thorndike, to be made use of by him, on condition that he should hold himself responsible to me for said sum, but otherwise it was to be returned to me without being recorded; that I had, therefore, no interest in it, if that deed was paid for and recorded. Then some conversation took place by Mr. Saunders, as to how it could be negotiated for. I told him that if Mr. Durant's negotiation with said Thorndike was not fully completed, he could doubtless negotiate with Mr. Durant; but if it was already completed, and the papers recorded, he would doubtless have to deal with Mr. Thorndike.

3. In answer to the third interrogatory he saith—After I had given the deed to said Thorndike, as stated by me in my answer to the preceding interrogatory, I never gave him any further, or any other account of said ownership. At previous interviews to my making the conveyance to Thorndike, I had informed him of my ownership, and shown him my title-deed.

4. In answer to the fourth interrogatory he saith—I had no other conversation in reference to his negotiating with Larkin Thorndike, than what is already stated in my answer to the second direct interrogatory, that I now recollect. I cannot state the time any other way than it was about two or three days previous to the date of my conditional deed of acquittance to Messrs. Lawrence, Nesmith and Saunders, and of the conditional deed of Durant to the same persons.

5. In answer to the fifth interrogatory he saith—At the first conversations I had with him on the subject, which were prior to my giving the deed to Thorndike, I gave him the whole history of the title, including my own, as far back as I knew. As already stated by me in my answers preceding, I told said Saunders that I owned the equity of redemption, and showed him my deed. I told him that I did not think my title was such a one as his company would need, for the reason that it did not bar the widow's right of dower, and a small piece of land belonging to it was not so minutely described in my deed as would be desirable.

6. In answer to the sixth interrogatory he saith—I never supposed that Durant had any title to the equity which I purchased, and never made a statement to Mr. Saunders of any such title or ownership.

7. In answer to the seventh interrogatory he saith—After I had informed Mr. Saunders of the execution and delivery of my deed to Thorndike, he requested me to go and see Durant, and negotiate an arrangement with him to get the papers back from said Thorndike, if the trade was not fully accomplished, and meet said Saunders for the purpose of making another attempt to trade.

8. In answer to the eighth interrogatory he saith—I said nothing to him on that point further than to tell him how I bought it, and to show him my deed.

9. In answer to the ninth interrogatory he saith—I never made any agreement with Durant in relation to said equity, except the one I fulfilled by giving my deed to Thorndike, as already stated by me in my answer to the second interrogatory. Previous to this, Mr. Durant and myself had twice met Mr. Saunders for the purpose of negotiating a trade with him, if we could. After these two interviews, I made the proposal to Durant under which the deed to Thorndike was finally given.

And in answer to the cross-interrogatories annexed to said commission, the said deponent deposeth and saith, as follows:

1. In answer to the first cross-interrogatory he saith—Durant has talked with me many times in relation to various things pertaining to this suit, and I think it not unlikely that he may have spoken of some

things inquired of in these interrogatories, but I have no recollection of what he said in relation to them, except that I think he informed me that Daniel Saunders had filed an amended answer, and that I might be called upon to go to Boston to give further testimony. I think he tried to tell me something of the contents of the amended answer, but I have no recollection of what he did state in relation to it. I have no recollection that any other person has ever talked with me on the subject. Durant has talked in reference to his suit with me, within a year, at my house, and in the streets, but at what time or place he mentioned any particular subject in reference to it, I cannot state.

2. In answer to the second cross-interrogatory he saith—Once or twice, at the request of Mr. Durant, I asked her some questions with regard to her recollection of what transpired at the time that Mr. Saunders and Durant met at my house. She answered those questions, but I do not now recollect precisely what they were. I think I spoke with her once at Andover, on the subject, a few weeks ago; and if I spoke with her more than once, I think the other time was at my house, but I do not recollect certainly of speaking with her about it more than once.

3. In answer to the third cross-interrogatory he saith—Mr. Durant informed me that he had conversed with her on the subject, and I once heard him conversing with her in regard to her recollection about some things, but the precise questions or answers I am unable to state, any further than to say they related to some things that transpired at my house when Mr. Saunders was there.

4. In answer to the fourth cross-interrogatory he saith—I cannot answer this interrogatory any further or otherwise than I have stated in my answer to the preceding interrogatory, except that said conversation between Mr. Durant and my sister was at my sister's home, in Andover, a few weeks ago.

5. In answer to the fifth cross-interrogatory he saith—I know of no such instance except what I have already related in my answers to the third and fourth cross-interrogatories.

6. In answer to the sixth cross-interrogatory he saith—I know nothing of what she recollects, except that Mr. Durant, when he came to request me to come to Boston, a few days ago, informed me that he had seen Charlotte, and she recollected some things which he wanted to prove, and that she had agreed to attend here to give her deposition. I understood him to say that her testimony related to some things that took place at the time that Mr. Saunders and himself met at my house, but what, or when it was, I did not fully understand.

7. In answer to the seventh cross-interrogatory he saith—I have examined the paper referred to. I never saw it before, and I have no recollection of ever having seen one like it.

8. In answer to the eighth cross-interrogatory he saith—I have no knowledge that they have, either in particular or in substance, been communicated to me. Mr. Durant has undertaken to tell me some-

thing in relation to questions that might be put to me, but I have no recollection whether or not he named any of those contained in this commission.

9. In answer to the ninth cross-interrogatory he saith—No one has talked with me on the subject except Mr. Durant, and I have no recollection of his having said anything to me more than I have already stated in my answer to the eighth cross-interrogatory.

10. In answer to the tenth cross-interrogatory he saith—I do not mean here to take back or alter anything of my former testimony.

STEPHEN BARKER.

Charlotte Barker, of Andover, in the district of Massachusetts, of lawful age, having been by me first carefully examined, and cautioned, and sworn to testify the whole truth, deposeth and saith, in answer to the several direct and cross-interrogatories annexed to the preceding commission, as follows:

1. In answer to the first interrogatory she saith—I am.

2. In answer to the second interrogatory she saith—I have.

3. In answer to the third interrogatory she saith—Mr. Saunders was frequently at my brother's, and conversed with him in relation to Mr. Durant's estate. I do not know as I could state particularly the conversation, but it was in reference to negotiating for the estate occupied by Mr. Durant, a paper-mill estate, I believe they called it. Mr. Saunders was very desirous of getting the estate or a bond for it. I do not now recollect any particular conversation between them, except that they had considerable conversation, at different times, about the purchase of it.

4. In answer to the fourth interrogatory she saith—I heard them conversing about the land, at my brother's, at several different times. Mr. Saunders expressed a desire to him to purchase the land; was very anxious to secure a bond for it. I do not recollect the particulars of the conversation. I think these conversations were in the winter of 1845; perhaps in the latter part of the winter, or in the spring.

5. In answer to the fifth interrogatory she saith—I heard my brother, some time during that winter, advise Mr. Saunders to trade with Mr. Durant for this land. I do not now recollect hearing my brother make any statement to Mr. Saunders in reference to Mr. Durant's title or interest in the land.

6. In answer to the sixth interrogatory she saith—I think I heard Mr. Saunders request my brother to influence Mr. Durant to trade with him. My brother went, I think, to Mr. Durant's house, at Mr. Saunders' request. I think I recollect this perfectly. This was at my brother's house, some time in the winter or spring of 1845, I think.

In answer to the cross-interrogatories annexed to said commission, the said deponent further deposeth and saith, as follows:

1. In answer to the first cross-interrogatory she saith—Mr. Durant called upon me, I think, last May, to inquire what I knew in relation

to the negotiation between himself and Mr. Saunders. I also think he spoke to me once about it, two or three years ago. He asked me what I recollected in reference to the transaction, and I stated to him, in substance, what I have now testified to.

2. In answer to the second cross-interrogatory she saith—My brother has spoken to me about it. He asked me if I recollected Mr. Saunders being there to negotiate with Mr. Durant. We talked some about it together. I saw, at my brother's, in last April, the report of the evidence, and read some parts of it, from curiosity. I did not suppose then that I was to be a witness. The conversation with my brother was last May.

3. In answer to the third cross-interrogatory she saith—I have heard very little in relation to it, since the interviews took place in 1845. I have occasionally asked my brother if the case was determined. I did not at the time pay any particular attention to what was said, with any idea of being called upon to testify to it.

4. In answer to the fourth cross-interrogatory she saith—I did not overhear what I heard. It was not private conversation; it was in the family room. I have no recollection of having conversed with any one on the subject except at the times already stated by me in my answers in this deposition.

5. In answer to the fifth cross-interrogatory she saith—I cannot answer this interrogatory any further or differently than what I have stated in my answer to the first and second cross-interrogatories.

6. In answer to the sixth cross-interrogatory she saith—They have not, only as before stated in my answers to the first and second cross-interrogatories.

7. In answer to the seventh cross-interrogatory she saith—Perhaps some of the times I was present during a greater part of the interview. I cannot state particularly. I think I was generally sitting in the room, but perhaps out occasionally. It was the room that the family occupied.

8. In answer to the eighth cross-interrogatory she saith—I recollect the general tenor of the conversation, as I have stated it. I recollect it because I heard it, and heard them converse in reference to the business repeatedly.

9. In answer to the ninth cross-interrogatory she saith—I do not. My brother was present at the conversations I heard.

10. In answer to the tenth cross-interrogatory she saith—They have not.

CHARLOTTE BARKER.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

On this twelfth day of July, A. D. one thousand eight hundred and fifty-four, by virtue of the commission hereunto annexed, I caused Stephen Barker and Charlotte Barker, the witnesses named in the said commission, to appear before me, a commissioner of the circuit court

of the United States for the district of Massachusetts; and each of the said witnesses was by me carefully examined, and cautioned, and sworn, and the testimony by him and her given was by me reduced to writing, and was subscribed by the witness in my presence. Each deposition was taken in a place separate and apart from all other persons, and no one was present except the deponent and myself; and in all other particulars, in the taking of said depositions, the directions contained in said commission were complied with.

In witness whereof I have hereunto set my hand, the day and year aforesaid.

ELIAS MERWIN, *U. S. Commissioner.*

FOSTER & al.
v.
DURANT.

COMMONWEALTH OF MASSACHUSETTS.

[L. S.] ESSEX, *ss.* To the Sheriff of our county of Essex, or his deputy, greeting:

Whereas, Joseph Foster, of Newton, in the county of Middlesex, paper-maker, and Seth Dewing, of Needham, within our county of Norfolk, yeoman, by the consideration of our justices of our supreme judicial court, holden at Salem, for and within our county of Essex aforesaid, on the first Tuesday of November, A. D. 1849, recovered judgment against Adolphus Durant, of Lawrence, alias of Methuen, in the county of Essex, paper manufacturer, for the sum of seventy-nine hundred and ninety-two dollars thirty-four cents damage, and twenty-one dollars eight cents, costs of suit, as to us appears of record, whereof execution remains to be done: we command you, therefore, that of the goods, chattels, or lands of the said defendant within your precinct, you cause to be paid and satisfied unto the said plaintiffs, at the value thereof in money, the aforesaid sums, being $8,013 42 in the whole, with interest from rendition of judgment, and twenty-five cents more for this writ; and thereof also to satisfy yourself for your own fees. And for want of goods, chattels, or lands of the said defendant, to be by him shown unto you or found within your precinct, to the acceptance of the said plaintiffs, to satisfy the sums aforesaid, we command you to take the body of the said defendant, and him commit unto our jail in Salem, Ipswich, or Newburyport, in our county of Essex aforesaid, and detain in your custody, within our said jail, until he pay the full sums above-mentioned, with your fees, or that he be discharged by the said plaintiffs, the creditors, or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein, unto our said supreme judicial court, to be holden at Ipswich, for and within our county of Essex aforesaid, upon the fifth Tuesday of April next.

Witness Lemuel Shaw, esq., at Salem, the twenty-second day of December, in the year of our Lord one thousand eight hundred and forty-nine.

E. SHILLABER, *Clerk.*

A true copy—Attest: A. HUNTINGTON, *Clerk.*

Judgment, Dec. 14, 1849.

By virtue of this execution, I have taken all the right, title, and interest in equity which the within named Adolphus Durant, of Lawrence, in the county of Essex, paper manufacturer, had, on the eighteenth day of October, A. D. eighteen hundred and forty-seven, being the time the same was attached on mesne process by Joshua Buswell, deceased, one of the deputy sheriffs of the county of Essex, of redeeming the following described mortgaged real estate, to wit: a certain tract of land, with two dwelling-houses and other out-buildings thereon, situated in Lawrence, formerly a part of Methuen, in the county of Essex, and bounded as follows: easterly, by the road leading from the house where Adolphus Durant now lives, to Methuen village, (so called;) northerly, by Benjamin Hall's land, or land formerly his; westerly, by land of John Tarbox, deceased, and southerly, by the Spiggot river, (so called,) and contains twenty-seven acres, be the same more or less; said premises are mortgaged by Thomas I. Richardson, of Methuen, in the county of Essex, blacksmith, to Jedediah Ingalls, of Durham, in the county of Strafford, State of New Hampshire, physician, deceased; said mortgage is now in the hands of Dr. Charles Ingalls, of Andover, to secure the payment of nine hundred dollars and interest now due on said mortgage, with the interest, eight hundred and fifty-seven dollars and seventy-five cents, there having been paid on said mortgage one hundred dollars. Said mortgaged deed is dated the eighteenth day of November, one thousand eight hundred and thirty-six, and recorded in the registry office in the county of Essex, November 24th, 1836, book 294, leaf 118, and reference may be had to said mortgage for a more particular description; and on the first day of January, one thousand eight hundred and fifty, I seized and took the above-described premises, being thirty days before the time appointed for the sale; and within thirty days after judgment hereafter mentioned, I gave notice, in writing, of the time and place of sale, to the within named Adolphus Durant, the debtor, by giving the same to him in hand; and gave public notice, by posting up notifications thereof in one public place in the said town of Lawrence, and also in one public place in each of the towns of Methuen and Andover, two towns adjoining the said town of Lawrence, and by publishing a notification thereof in the Lawrence Courier, a public newspaper printed in said Lawrence, in the county of Essex, three weeks successively, before the day appointed for said sale, that the said Adolphus Durant's right of redeeming said mortgaged premises would be sold on Thursday, the thirty-first day of January, 1850,

at ten o'clock a. m., on the premises; and at said time and place of sale, this execution not being satisfied, by order of the within named Foster, I sold said right in equity of redemption to Joseph Foster, of Newton, in the county of Middlesex, paper manufacturer, who bid therefor the sum of eight thousand one hundred and forty-eight dollars and seventy-one cents, which was more than any other person offered for the same; and I have made, executed, acknowledged, and delivered to the said Joseph Foster a good and sufficient deed of the said right in equity, sold as aforesaid, which said Foster is to hold to him and his heirs, as the law provides in similar cases for the sales of equities on executions.

The amount of this execution is - - - -	$7,993 67
Interest is - - - - - - - -	62 61
Cost of levy is - - - - - - -	92 43
The amount of this execution, and all costs -	$8,148 71
The amount of sale is - - - - -	$8,148 71

And so I return this execution, satisfied in full, by said Foster's discharging the same.

M. BRIDGES, *D. Sheriff.*

A true copy—Attest:

A. HUNTINGTON, *Clerk.*

Received of M. Bridges, D. Sheriff, a deed of the right in equity sold on the 31st day of January, 1850, on the within execution, and discharged the within execution and cost in full, and satisfied.

JOSEP FOSTER.

Cost of levy—	
Poundage - - - - - - - -	$83 93
Travel - - - - - - - -	1 00
Advertising, posting notices, attending auction, and selling the same - - - - -	6 00
Deed - - - - - - - - -	1 50
	$92 43

A true copy—Attest: A. HUNTINGTON, *Clerk.*

CIRCUIT COURT OF THE U. S.,
Mass. District.

ADOLPHUS DURANT
vs.
SAMUEL LAWRENCE & ALS. } Oct. T., 1853.

UNITED STATES OF AMERICA.
Circuit Court U. S., Mass. Dist., ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Mass. dist., do hereby certify that the foregoing is a

true copy of the evidence and the papers relating to the same, as filed in the clerk's office of this court, in the case of Adolphus Durant, in eq., vs. Samuel Lawrence & als., in said court. All which were used at the trial thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Boston, in said dis-
[L. S.] trict, this seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States of America the eightieth.

H. W. FULLER,
Clerk Cir. C. U. S., Mass. Dist.

Writ of Certiorari.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Judges of the Circuit Court of the United States for the district of [SEAL.] Massachusetts, greeting:

Whereas in a certain suit in said circuit court, between Adolphus Durant, complainant, and Samuel Lawrence & al., respondents, in chancery, which suit was removed to the Supreme Court of the United States, by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"It is agreed, that the following documents and exhibits were used in evidence on the hearing of this cause in the Circuit Court of the United States for the district of Massachusetts, and should have been certified up as a part of the record evidence, and that the same shall now be printed and used with the evidence already certified up by the clerk of said circuit court, namely—

1. The bill of discovery and answer—Essex Company vs. Adolphus Durant.

2. The answer of Farley & al. to the bill to redeem by the Essex Company.

3. The deposition of said Durant in said cause.

4. The record of the insolvency proceedings on the petition of said Durant.

5. The bills or accounts mentioned in the printed agreement, on pages 311 and 312 of printed evidence in the circuit court, viz:

Is. Foster's bill, marked E.

S. Dewing's six bills, marked C, No. 1, 2, 3, 4, 5, 6.

A. Durant's two bills, marked A."

You, therefore, are hereby commanded, that searching the records and proceedings in said cause, you certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-five.

WM. THOS. CARROLL.

UNITED STATES OF AMERICA,
Circuit Court of the U. S., Massachusetts district, ss:

To the honorable the Justices of the Supreme Court of the United States, &c.

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, do certify, that pursu-

ant to the directions contained in this writ, I have made diligent search of the records and proceedings in said cause in this court, and return herewith copies of sundry documents and papers, being all and the same described in the agreement of parties set forth in this writ, which papers and documents were used in evidence at the hearing of said cause, but were omitted in my former certificate, as the counsel did not cause them to be marked as filed in said case—the same having since been done by consent of parties and in conformity with their agreement—no other omissions being found.

Boston, Nov. 6, 1856.

H. W. FULLER,
Clerk C. C. U. S. Mass. Dist.

Bill of Complaint.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

October Term, 1853.—Filed January 25, 1854.—In Equity.

ESSEX COMPANY, IN EQUITY,
vs.
ADOLPHUS DURANT.

To the Honorable the Justices of the Circuit Court of the United States within and for the District of Massachusetts:

The Essex Company, a corporation duly established by law in said district, brings this bill against Adolphus Durant, now or late of Hartford, in the State of Connecticut, and now or late a citizen of said State.

And thereupon your orators complain and say, that the said Durant has heretofore filed his bill of complaint in this honorable court against your orators and divers other defendants therein named; and in and by his said bill has, among other things, alleged substantially to the effect following, namely: That he was formerly the owner and in possession of certain tracts or parcels of land situate in this district, and therein particularly described; that the said Durant, having mortgaged the premises to divers persons, afterwards, by deed dated March 29th, 1843, conveyed the said lands subject to said prior mortgages, to one Jesse Sargent; that on the eleventh day of September, 1843, said Sargent, by deed of that date, conveyed his said title to one Stephen Barker; that shortly after the said conveyance to said Barker, said Durant made an agreement with said Barker, whereby said Durant in effect became and was the sole equitable owner of said premises, and said Barker became and was the holder of the legal title only as trustee for said Durant, upon a parol agreement of trust between them, particularly set forth in said bill; that the defendant, Saunders, thereafter, having notice of such equitable ownership, agreed on behalf of himself and the defendants, Lawrence and Nesmith, either to purchase said premises of said Durant for a large sum of money, namely, $27,000, deducting the incumbrances thereon

to be discharged by said Saunders, Lawrence and Nesmith, or else to notify him on or before the 1st day of April, 1845, of their election not to purchase the same; and that said Durant, in pursuance of said agreement, made and delivered to them a conditional deed of the premises, to become void if they should elect not to purchase the same and not to perform the conditions of said deed; that the said Durant, on the 21st day of October, 1843, became insolvent, and petitioned for the benefit of the insolvent laws of Massachusetts; that on the first day of June, 1844, his assignee in insolvency conveyed all the right, title, and interest which said Durant had in said lands on said 21st day of October, to one Joseph Foster, who, on the 7th of April, 1845, conveyed all his interest therein to one Robert Farley, who, on the 20th day of August, 1846, conveyed all his interest to your orators; that said defendants, Saunders, Lawrence and Nesmith, with full notice of said equitable title of Durant, afterwards, by certain representations alleged in said bill, procured and induced said Barker to convey to them the legal title to said premises without notice to said Durant, and afterwards, on said first day of April, 1845, notified said Durant of their election not to purchase the said estate, but, nevertheless, conveyed the same on the same day to the defendants, Rand and Storrow, who took said conveyance as trustees for your orators, with notice of said Durant's said equitable title; and that said Rand and Storrow thereafter, on the 7th day of June, 1845, by deed of that date, conveyed the same to your orators, who, at the time, had full notice of said equitable title of said Durant; that after said conveyance to said Rand and Storrow, it was agreed between your orators and said Durant, that he should assist your orators in procuring assignments of the mortgages on said lands from the holders, and that when the title should be consolidated in their hands, your orators would make an arrangement with said Durant, by which his equitable right in the premises should be fully saved to him; that said Durant did render such assistance, but that your orators wholly neglected and refused to perform their part of said agreement.

And the said Durant, in and by the said bill, prayed this honorable court that your orators and the other defendants to said bill should answer upon oath the several interrogatories addressed to them respectively, and that the said conditional deed from said Durant, and the deed from said Barker to said Saunders and others, and said deed of said Saunders and others to said Rand and Storrow, and the said deed from said Rand and Storrow to your orators, might be decreed to be void and inoperative, to divest said Durant of any title to or property in said lands; and that your orators might be decreed to convey the said lands and all improvements thereon to said Durant upon payment of such sum as in equity said Durant ought to pay for the reimbursement to them of money expended by them in procuring assignments of said mortgages; and that your orators might be enjoined from further prosecuting an action of ejectment commenced against said Durant for the recovery of the possession of said lands, or a part of them, from said Durant.

ant to the directions contained in this writ, I have made diligent search of the records and proceedings in said cause in this court, and return herewith copies of sundry documents and papers, being all and the same described in the agreement of parties set forth in this writ, which papers and documents were used in evidence at the hearing of said cause, but were omitted in my former certificate, as the counsel did not cause them to be marked as filed in said case—the same having since been done by consent of parties and in conformity with their agreement—no other omissions being found.

Boston, Nov. 6, 1856.

H. W. FULLER,
Clerk C. C. U. S. Mass. Dist.

Bill of Complaint.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

October Term, 1853.—Filed January 25, 1854.—In Equity.

ESSEX COMPANY, IN EQUITY,
vs.
ADOLPHUS DURANT.

To the Honorable the Justices of the Circuit Court of the United States within and for the District of Massachusetts:

The Essex Company, a corporation duly established by law in said district, brings this bill against Adolphus Durant, now or late of Hartford, in the State of Connecticut, and now or late a citizen of said State.

And thereupon your orators complain and say, that the said Durant has heretofore filed his bill of complaint in this honorable court against your orators and divers other defendants therein named; and in and by his said bill has, among other things, alleged substantially to the effect following, namely: That he was formerly the owner and in possession of certain tracts or parcels of land situate in this district, and therein particularly described; that the said Durant, having mortgaged the premises to divers persons, afterwards, by deed dated March 29th, 1843, conveyed the said lands subject to said prior mortgages, to one Jesse Sargent; that on the eleventh day of September, 1843, said Sargent, by deed of that date, conveyed his said title to one Stephen Barker; that shortly after the said conveyance to said Barker, said Durant made an agreement with said Barker, whereby said Durant in effect became and was the sole equitable owner of said premises, and said Barker became and was the holder of the legal title only as trustee for said Durant, upon a parol agreement of trust between them, particularly set forth in said bill; that the defendant, Saunders, thereafter, having notice of such equitable ownership, agreed on behalf of himself and the defendants, Lawrence and Nesmith, either to purchase said premises of said Durant for a large sum of money, namely, $27,000, deducting the incumbrances thereon

to be discharged by said Saunders, Lawrence and Nesmith, or else to notify him on or before the 1st day of April, 1845, of their election not to purchase the same; and that said Durant, in pursuance of said agreement, made and delivered to them a conditional deed of the premises, to become void if they should elect not to purchase the same and not to perform the conditions of said deed; that the said Durant, on the 21st day of October, 1843, became insolvent, and petitioned for the benefit of the insolvent laws of Massachusetts; that on the first day of June, 1844, his assignee in insolvency conveyed all the right, title, and interest which said Durant had in said lands on said 21st day of October, to one Joseph Foster, who, on the 7th of April, 1845, conveyed all his interest therein to one Robert Farley, who, on the 20th day of August, 1846, conveyed all his interest to your orators; that said defendants, Saunders, Lawrence and Nesmith, with full notice of said equitable title of Durant, afterwards, by certain representations alleged in said bill, procured and induced said Barker to convey to them the legal title to said premises without notice to said Durant, and afterwards, on said first day of April, 1845, notified said Durant of their election not to purchase the said estate, but, nevertheless, conveyed the same on the same day to the defendants, Rand and Storrow, who took said conveyance as trustees for your orators, with notice of said Durant's said equitable title; and that said Rand and Storrow thereafter, on the 7th day of June, 1845, by deed of that date, conveyed the same to your orators, who, at the time, had full notice of said equitable title of said Durant; that after said conveyance to said Rand and Storrow, it was agreed between your orators and said Durant, that he should assist your orators in procuring assignments of the mortgages on said lands from the holders, and that when the title should be consolidated in their hands, your orators would make an arrangement with said Durant, by which his equitable right in the premises should be fully saved to him; that said Durant did render such assistance, but that your orators wholly neglected and refused to perform their part of said agreement.

And the said Durant, in and by the said bill, prayed this honorable court that your orators and the other defendants to said bill should answer upon oath the several interrogatories addressed to them respectively, and that the said conditional deed from said Durant, and the deed from said Barker to said Saunders and others, and said deed of said Saunders and others to said Rand and Storrow, and the said deed from said Rand and Storrow to your orators, might be decreed to be void and inoperative, to divest said Durant of any title to or property in said lands; and that your orators might be decreed to convey the said lands and all improvements thereon to said Durant upon payment of such sum as in equity said Durant ought to pay for the reimbursement to them of money expended by them in procuring assignments of said mortgages; and that your orators might be enjoined from further prosecuting an action of ejectment commenced against said Durant for the recovery of the possession of said lands, or a part of them, from said Durant.

All which matters and things, by referring to said bill now remaining on the files of this court, whereto for greater certainty and particularity your orators crave leave to refer, will, together with divers other matters and things therein stated and alleged, but not in this cross-bill particularly set forth, more fully and at large appear.

And your orators further show, that your orators duly appeared and filed their answer to said bill, and also filed an amended answer by consent of parties thereto, and in and by said amended answer they alleged in substance, and submitted to this honorable court among other things, as one of their defences to said bill, to the effect following, namely: That the said conveyance from said Durant to said Sargent was made in contemplation of insolvency, and upon a secret trust, and for the purpose of giving to said Sargent a preference over the other creditors of said Durant, and of concealing the residue of said property from his other creditors, with a view to hinder, and delay, and defeat them; and that the said conveyance was fraudulent and void against said creditors, as a conveyance made to hinder, delay, and defeat them, and also fraudulent and void under the insolvent laws of Massachusetts against such creditors as had duly proved their claims, as a conveyance made and intended to give a preference to said Sargent; and that said Barker purchased the title of said Sargent with full notice of the said fact, and therefore that the said title of said Barker, and said alleged equitable title of said Durant, founded on said agreement with said Barker, were not available in law or equity against said title of said Foster, who was a creditor of said Durant, and had duly proved his claim pursuant to said insolvent laws, and that your orators are *bona fide* purchasers of said title from said Foster for a valuable consideration.

And the more distinctly to put in issue the facts tending to show the invalidity as aforesaid of said Barker's title, your orators, in and by their said amended answer, alleged in substance and to the effect that the consideration of said deed to Sargent, beyond a very small amount of prior indebtedness, was an agreement in writing not recorded from said Sargent to said Durant, whereby said Sargent promised, when the said complainant should request him so to do, to lease or sell the property in such way and manner, and at such time, as the said Durant should direct, and after indemnifying himself for his costs and expenses, if any, and deducting the amount of any debt that might be due to him from said Durant, or incurred on his account, to pay over to said Durant the whole residue of the proceeds of such lease or sale upon demand; all which matters and things in and by said amended answer now remaining on the files of this honorable court, and to which your orators pray leave for greater certainty and particularity to refer, will, together with divers other matters and things therein contained, more fully and at large appear. And your orators believe and aver, that the said written agreement of said Sargent bore date March 30, 1843.

And your orators aver, that the said suit in equity of the said Durant against your orators is still pending in this court, and that the same has

not yet been heard by this honorable court, and that said Durant has in his possession or power the said written agreement of said Sargent, from which, if produced, the truth of said matter would appear; but the said Durant refuses to produce the same, and your orators, without a discovery thereof, will be unable fully to establish their said defence to the said action.

To the end, therefore, that the said defendant may, if he can, show why your orators should not have the discovery prayed for, and may upon his corporal oath, and according to his best knowledge, information, and belief, full, true, direct, and perfect answers make to the following interrogatories, viz:

1. Whether the said defendant has not filed his said bill against your orators and others in this honorable court, as herein above set forth?

2. Whether the defendant has not, in and by said bill, complained and prayed substantially and to the effect as is herein above set forth, or how otherwise?

3. Whether your orators have not filed their said amended answer to said bill?

4. Whether your orators have not, in and by their said amended answer, insisted and relied upon the invalidity of said Barker's title, as against said Foster's title, as one of their defences to said bill; and whether your orators have not alleged the making and existence of an agreement or memorandum in writing, as therein described, of said Sargent with said Durant, as a fact tending to prove the same?

5. Whether the said suit in equity of the said defendant against your orators and others is not yet pending in this honorable court?

6. Whether the defendant hath, or at any time, and when, had in his possession or power, or in the possession or power of his solicitors, or some and which of them, or of some other person, and whom, an agreement or memorandum in writing of the said Sargent relating to the said conveyance from said Durant to him, and to the matter of defence so alleged in and by said amended answer, namely: An agreement or memorandum in writing of the date, tenor, and effect herein above recited, or some and what other agreement or memorandum in writing of the said Sargent, relating to said conveyance from the said defendant to him; and make and set forth a true and accurate description of said agreement, or any such as aforesaid as is or ever was in his possession or power, or that of his solicitors, any or either of them, and produce and exhibit the said original paper, with liberty to your orators and their solicitors to inspect and take copies thereof as they may be advised.

And that said defendant may make a full and true discovery of all and every the matters herein above inquired of; and that your orators may have the benefit thereof on the hearing of the said cause, may it please your honors to grant unto your orators a writ of subpœna in due form, and according to the rules and practice of this court, directed to the said Durant, and commanding him upon a certain day, and under a certain penalty therein to be inserted, personally to be and appear

before this honorable court, then and there to answer the premises. And your orators, as in duty bound, will ever pray, &c.

ESSEX CO.,
By W. H. GARDINER,
C. GORE RIPLEY,
Solicitors and of Counsel.

Answer.

The Answer of Adolphus Durant to the Bill of Complaint of the Essex Company:

This respondent saving to himself all benefit of exception to the said bill of complaint, for answer thereunto, or unto so much or such parts thereof as he is advised it is necessary for him to answer unto, answering, says: True it is that he has heretofore filed in the circuit court of the United States, within and for the district of Massachusetts, his bill of complaint against the said Essex Company, and divers other defendants, as the said Essex Company have in their said bill of complaint averred, which bill of complaint so as aforesaid filed by this respondent is now pending. This respondent admits that the Essex Company did appear and file their answer, and also their amended answer to the bill of complaint, so as aforesaid filed by this respondent, to which this respondent refers for the allegations therein contained.

This respondent further answering admits, that the said Sargent, on or about the day when this respondent made a conveyance to him the said Sargent, gave to this respondent a memorandum in writing, stating therein the terms and conditions of the said conveyance, which memorandum was afterwards, at some time during the year eighteen hundred and forty-four, (the precise time this respondent cannot state,) upon a settlement made by this respondent with the said Sargent, delivered to him, or destroyed, and this respondent cannot state whether it was so delivered or destroyed.

This respondent further answering, in answer to the first interrogatory, says, that he has filed a bill against the Essex Company and others, as defendants in the court aforesaid.

In answer to the second interrogatory he says, he has prayed in his said bill of complaint as is therein set forth and exhibited, and he submits to the judgment of the court, whether the same is substantially and to the effect supposed in said interrogatory.

In answer to the third interrogatory, the said respondent admits the Essex Company have filed their amended answer to the bill of said respondent.

In answer to the fourth interrogatory, the respondent admits that the Essex Company have averred the invalidity of Barker's title as against the supposed title of Foster. This respondent admits the allegation, by the said Essex Company in their aforesaid answer, of the making and existence of a memorandum or agreement in writing by Sargent to this respondent, but cannot say whether the same is accurately described in said allegation so made by the Essex Company.

In answer to the fifth interrogatory, the respondent says, that the said suit in equity is now pending in this honorable court.

In answer to the sixth interrogatory, this respondent says, that he once had in his possession an agreement or memorandum in writing, made by the said Sargent, relating to the said conveyance from this respondent to him; that the same was given to this respondent by the said Sargent, at the time the deed of this respondent was given to said Sargent; that thereafter, and some time during the year eighteen hundred and forty-four, this respondent and the said Sargent had a settlement and adjustment of accounts—the precise time this respondent cannot state—at which settlement the said memorandum was delivered to the said Sargent, or destroyed, and this respondent cannot say which.

This respondent further answering says, that the said memorandum is not, to his knowledge or belief, in his possession, power, or control; that the same is not to his knowledge, or in his belief, in the custody, possession, or power of any of the servants, agents, attorneys, or solicitors, past or present, of this respondent; that he has no knowledge or possession, and has not had, of the said memorandum, since the year eighteen hundred and forty-four, or since the said adjustment by him with the said Sargent.

This respondent further says, that he has in his possession a paper, not signed, which he now produces and marks No. 1; that the said paper was prepared for the signature of the said Sargent, at or about the day of its date, and was designed for execution; that some objection was made thereto, or for some other reason the same was not executed, and this respondent is unable to state more distinctly why the same was not executed.

The respondent further says, that the paper now produced was and is, to the best knowledge and belief of this respondent, substantially and in every important particular the same as the paper which was signed and delivered by the said Sargent to this respondent, and is the paper from which the one actually signed was substantially copied.

ADOLPHUS DURANT.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

MAY 20TH, 1854.

Personally appeared the above named Adolphus Durant, and made oath that all the several matters and things which are stated in the foregoing answer, as of his own knowledge, are true, and so far as stated from the information of others, he believes them to be true.

Before me,

H. W. FULLER, *Clerk.*

Document No. 1.

Know all men by these presents, that whereas I have this day received of Adolphus Durant a deed of conveyance of his dwelling-house and land attached to the same, and also of his two paper-mills and

machinery attached to, or used, or belonging to, or with the same: Now, therefore, in consideration thereof, I hereby promise and agree to and with the said Durant, that I will, on demand of said Durant, forthwith proceed to dispose of the same either by renting or selling it, either by public or private bargain or sale, in such way and manner, and at such time, as said Durant shall direct; and after having thus leased, rented, or sold the same, will make out and duly execute to the lessee or purchaser under my hand such lease or deed of the same to the lessee or purchaser as the nature of the transaction shall reasonably and properly require; and the proceeds of such rent or sale shall be applied—first, to the payment to myself of all reasonable costs and charges for my services and expenses in making such sale and executing the conveyance thereof; secondly, to the payments of all debts, dues, advancements, and liabilities which now are, or shall then be in any way due or coming to me, or for which I shall be liable for and on account of said Durant. And the remainder of such proceeds I hereby promise to pay to the said Durant on demand.

Dated at Methuen, the thirtieth day of March, one thousand eight hundred and forty-three.

Spring T., 1846.—S. J. C.

ESSEX COMPANY
vs.
ROBERT FARLEY, JOSEPH FOSTER, and SETH DEWING. } In equity.

The said defendants move for leave to withdraw their plea filed in said case, and to amend, so that their joint answer may stand as follows:

These defendants, saving unto themselves all benefit of exceptions to the said bill of complaint, for answer thereunto, or unto so much as they are advised that it is material they should answer unto, answering, say: That they admit that said Durant made the mortgages named in complainants' bill to the Mercantile Bank and to Abigail Durant, and that the same have been assigned, and have come to the said complainants, as in said bill is alleged; but these defendants are not informed what sum or sums are respectively due on said mortgages; and they pray that said complainants may make proof thereof.

And these defendants further admit, that said Durant made the mortgage named in the said complainants' bill to said Foster and Dewing, two of said defendants, and the entry upon said premises to foreclose the same; and that said mortgage, by the several mesne conveyances, has been assigned to said Robert Farley, the other of said defendants, and that he now holds the same.

And these defendants do not admit, but do deny, that said Durant made and executed the deed in said complainants' bill named to Jesse Sargent, or that said Sargent made and executed the deed named in said complainants' bill to said Stephen Barker, or that said Barker made and executed the deed named in said complainants' bill to Samuel Lawrence, John Nesmith, and Daniel Saunders, or that any valuable

or adequate consideration was paid for each or any of said deeds; and these defendants pray that said complainants may be required to prove the execution and delivery of each of said deeds, and the date thereof, and the consideration paid, and the date of the payment and judgments of any consideration paid, if any was paid.

And these defendants show, that if said paper titles were made, as alleged by said complainants in their said bill, that the said equity of redeeming the said premises remained vested in the said Durant, and did not pass to or vest in the said grantees respectively and the said complainants, as to the creditors of said Durant, because these defendants show that the said paper title from said Durant to said Sargent, and from said Sargent to said Barker, if any were made, as alleged in complainants' said bill, were made to hinder, defeat, delay, and defraud the said creditors of said Durant, and upon a secret trust for the use and benefit of said Durant, and in contemplation of the insolvency of said Durant, and of his obtaining his discharge from his debts under the Insolvent law of this Commonwealth, and not otherwise.

And these defendants further show, that said Lawrence, Nesmith, and Saunders, were agents for certain persons, to these defendants unknown, to purchase certain lands in Methuen and Andover, including said premises, and to obtain the act of incorporation of said Essex Company; and that said persons are three of the four persons named as corporators in said act; and that if said paper title was obtained by them of said Barker, as alleged in said complainants' bill, the same was taken and obtained by them as such agents, and in the agency aforesaid.

And these defendants further show, that the said Sargent, Barker, Saunders, Lawrence, and Nesmith, at the times and dates respectively when said paper titles are alleged to be made, and when it is pretended that the consideration thereof was for each respectively paid, had full notice and certain knowledge that the said paper titles from said Durant to said Sargent, and from said Sargent to said Barker, were made to hinder, defeat, delay, and defraud the creditors of said Durant, and upon a secret trust for the benefit of said Durant, and in fraud of the Insolvent law of this Commonwealth, as aforesaid, and the like full notice and knowledge of the situation, conduct, purposes, and designs of the said Durant, and of all the facts and circumstances which rendered said paper titles fraudulent and void, as to the creditors of said Durant; and the said Sargent and Barker, and the said Saunders, Lawrence, and Nesmith, severally at the times aforesaid, had full notice and certain knowledge as aforesaid.

And these defendants show that said Durant, in pursuance of said contemplation, at the time when said paper title was made to said Sargent, on or about the twentieth day of October, A. D. 1843, presented to a master in chancery in said county of Essex his petition for a discharge from his debts, under the said Insolvent laws of this Commonwealth; that on the seventeenth day of January, A. D. 1844, the said Joseph Foster filed his objections in writing to the said certificate

being granted to said Durant; that said Durant had property concealed by way of sales made a short time before filing his said petition in chancery, which sales were to keep property concealed from his creditors; and said master in chancery refused to grant said Durant his certificate, (the said Foster holding one-half in value of the claims against the estate of said Durant,) and the said Durant appealed to this honorable court, and said appeal was heard upon said objections before a judge of this court on or about the fourteenth day of May, A. D. 1844, and upon said hearing it was not attempted to be proved that said Durant had any other property concealed in the way of sales than the premises named in said complainant's said bill, and it did appear and was proved upon said hearing that said Durant had concealed by said sale to said Sargent the premises named in said complainant's said bill; and the petition of said Durant for said certificate of discharge from his debts was refused by said court, as by the record thereof remaining will more fully appear. And so the defendants say it was adjudged and decided by said court that said Durant had concealed or attempted to conceal his property in said premises by said paper title to said Sargent, and that the title to said premises was still vested in said Durant.

And upon said hearing the said Durant presented himself for examination, and was examined upon oath; and upon said examination was required to produce, and did produce, a bond from said Sargent to him, the said Durant, bearing even date with that in said alleged paper title from said Durant to said Sargent, and said bond was a defeasance of said deed, and was conditioned that said Sargent should re-convey the said premises to said Durant, or as he should direct, and should hold the same in trust for said Durant, and for his use and benefit; and said bond was then and there at said hearing returned to said Durant, and retained by him.

And these defendants further show, that before this time the assignee in insolvency of the estate of said Durant had sold and disposed of the estate of said Durant that had come to his knowledge and possession; and the said Durant had denied to said assignee that he had any interest in the premises named in said complainant's bill, and the said Durant had concealed said bond from said assignee, and had not delivered the same to him or to the messenger appointed to receive from him his estate and papers.

And these defendants show, that after said hearing and the discovery and disclosure of said bond thereat as aforesaid, and not before that time, the said assignee of said Durant in insolvency, in performance of his trust as said assignee, advertised said Durant's right of redeeming said premises, subject to the said mortgages hereinbefore named, to be sold at public auction on or about the first day of June, A. D. 1844, and at said sale the said Joseph Foster bid off and purchased said equity for the sum of six hundred dollars, and the said Foster has paid said assignee the same sum therefor.

And the said Stephen Barker, named in the said complainant's bill, was present at said sale at auction of said premises, and when the same

were bid off and sold to said Foster; and the said Barker then at said sale, or at any time before or after said sale, gave no notice to said assignee of said Durant in insolvency, or to said Foster, that he, the said Barker, had or claimed to have any right, title, claim, interest, estate or demand in or to the premises aforesaid, and said Barker did not at said sale in any way or manner object to or prevent, or attempt to prevent said premises being offered for sale as the estate of said Durant in the hands of said assignee in insolvency, or the sale of the same to the highest bidder therefor, and to said Foster or to any other person; and the said Barker had full notice and certain knowledge that said premises were offered to be sold, and that they were sold to said Foster as aforesaid, and said Barker permitted the same to be sold to said Foster, and said Foster to bind himself to said purchase as aforesaid, without any notice or intimation from said Barker to said assignee, or to said Foster, that said Barker or his heirs or assigns should or could deny or in any way or manner controvert the title of said assignee as aforesaid or of his assigns; and these defendants show, that said Saunders, Nesmith and Lawrence had full notice hereof, and that it is against equity and good conscience that said Barker or his assigns should set up any title or claim to said premises, derived before said sale and then existing in him the said Barker against said Foster, holding and claiming under a deed given in pursuance of said sale made by order of law and in performance of the trust of said assignee.

And these defendants further show, that the title to said equity of redeeming said premises, remained vested in said Durant as aforesaid, at the time when he presented his petition in insolvency as aforesaid, to said master in chancery; that by said petition, and upon the proceedings thereon before said master, according to law, the same equity became vested in said master as the estate of said Durant, for the benefit of the creditors of said Durant, and to be sold, and the proceeds thereof to be distributed among them; and the said master, by his deed, on or about the twenty-seventh day of December, A. D. 1843, assigned and conveyed all the real and personal estate of said Durant in his hands as aforesaid to Jacob How, legal assignee of the estate of said Durant, an insolvent debtor as aforesaid, and by force of said deed of said master the said estate became and was vested in said assignee for the purposes aforesaid; and on or about the first day of June, A. D. 1844, the said assignee sold the same to said Joseph Foster as aforesaid; and said assignee, on or about the fifth day of April, A. D. 1845, made and executed his deed of said premises to said Foster; and on or about the seventh day of said April, the said Farley bought said premises of said Foster for the sum of twenty-five hundred dollars, and the said Foster made his deed of said premises to said Farley, and said premises thereby became and were, and now are, legally and equitably vested in said Farley; and the said Farley craves leave to annex hereto a copy of each of said deeds, marked A and B and C, and to refer thereto.

And these defendants say that the value of said equity of redeeming said premises, before and at the time of said alleged sale by said Bar-

ker to said complainants, was the sum of two thousand dollars, or thereabouts.

And these defendants further show, that said Foster, Dewing, and Durant were formerly co-partners for the manufacture of paper on said premises, under the firm of A. Durant & Company; that said firm became insolvent on or about the first day of May, A. D. 1837, and that said Durant was then indebted to said firm in a large sum of money, to wit, the sum of six thousand dollars, or thereabouts; and that said sum was wholly unpaid and was due and owing to said Foster and Dewing when said Durant presented his said petition for a discharge from his debts as aforesaid.

And these defendants further show, that the said Durant still retains said Sargent's said bond to him in his possession, and the said Durant has refused to submit to an examination before said master in chancery, as requested by an order of said master; and said Durant, about the time when it is alleged said Barker made said paper title to said complainants of said premises, and since that time, has declared that if said complainants hold said premises he shall receive a large sum of money from them, or in some way shall be worth a great deal of property, or other declarations of the same or a similar tenor and effect have been made by the said Durant; and since the time when it is alleged that said paper title to said premises was made by said Barker to said complainants, the said Barker, either on his own account, or for said Durant, or for said complainants, or for the joint account of all or some of them, made application to said Foster to sell or release the debt so due and owing as aforesaid from said Durant to said Foster and Dewing, and said Barker pressed said Foster a long time, and urgently, to name the terms on which he would sell or release said demand, and said Foster declined to name any terms, unless he, the said Barker, would explain his motive or purpose in making said application, and said Foster refused to name any terms as aforesaid; and said Barker, before and at the time, and continually since the time when he made said application to said Foster, has been an agent for said complainants in obtaining and securing the title to said lands in Andover and Methuen.

And these defendants show that said Sargent, Barker, and Durant should be made parties hereto, and should be joined in this suit; and these defendants pray that they may have the same or as great advantage from this objection as if the same had been taken by way of plea or demurrer to said bill.

And these defendants deny all and all manner of unlawful combination, and they deny that said Joseph Foster, named a defendant in said bill, has any interest, claim or right in said premises, or any interest in the event of this suit, and pray that his name may be ordered to be struck out of said bill, and be allowed his costs. And, thereupon, the said Farley and Dewing pray that they may be permitted to prove their several allegations, and to refer to and to produce here in court copies of the records referred to herein, and to produce and prove all such papers and documents as shall be requisite and proper in the premises.

Without this, that there is any other matter, cause or thing, in said complainants' said bill of complaint, material or necessary for these defendants to make answer unto, and not herein and hereby sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants: all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

THE COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

To any Justice of the Peace, being either a judge of the court of common pleas, a judge of probate, or an attorney at law, within this Commonwealth of Massachusetts, not interested or of counsel *as* the cause hereinafter named—greeting:

Be it known, that, reposing confidence in your wisdom, prudence and fidelity, we have appointed you, and by these presents do authorize and empower you to take the depositions, on oath, of all such witnesses as either of the parties hereinafter named may desire, to be used in the trial of a certain action now pending in our supreme judicial court, in which the Essex Company are plaintiffs, and Robert Farley and al. are defendants; and for that purpose, at a time and place to be by you appointed, to cause any such witness to come before you, and each witness, when present before you, to examine carefully, on oath, of and upon the several interrogatories to be exhibited to you in behalf of either of the parties aforesaid, touching the premises; and when you have so taken the examination aforesaid, in writing, and caused the same to be subscribed by said witness in your presence, you are to return the same, as soon as may be, together with the said interrogatories and this writ, with your doings herein, sealed up by you and directed to the said court, to be holden at Ipswich, within and for said county of Essex, on the fourth Tuesday of April next.

In testimony whereof, we have caused the seal of our said court to be hereunto affixed.

Witness Lemuel Shaw, esq., at Salem, the fourth day of March, in the year of our Lord one thousand eight hundred and forty-six.

E. SHILLABER, *Clerk.*

SUFFOLK, *ss:* MARCH 13TH, 1846.

The execution of the above commission appears in certain schedules hereunto annexed. *Attr.* George T. Curtis, magistrate, who took the same, being also a counsellor at law.

This deposition is to be taken in the manner prescribed by the following rule of the supreme judicial court:

"In all cases where depositions are to be taken on interrogatories, either for a suit at common law or in equity, neither party shall be permitted to attend at the taking of such deposition, either himself, or by

an attorney or agent, nor be permitted to communicate by interrogatories or suggestions with such deponent, whilst giving his deposition in answer to the interrogatories annexed to the commission. And it shall be the duty of the magistrate, commissioner or examiner, to take such deposition in a place separate and apart from all other persons, and to permit no person to be present during such examination, except the deponent and himself, and such disinterested person (if any) as he may think fit to appoint as a clerk, to assist him in reducing the deposition to writing. And it shall be the duty of such examiner to put the several interrogatories and cross-interrogatories to the deponent in their order, and to take the answer of the deponent to each, fully and clearly, before proceeding to the next, and not to read to the deponent, nor permit the deponent to read, a succeeding interrogatory until the answer to the preceding has been fully taken down."

Interrogatories to be propounded to Adolphus Durant, a witness to be produced and examined by the complainants.

1. Did you execute a conveyance of real estate to Jesse Sargent, bearing date on the 29th day of March, 1843; if yea, what was the consideration of the said conveyance, and what was the agreement, if any, between yourself and the said Sargent relative thereto?

2. At the time you executed that conveyance, had you any intent to deceive, delay, or defraud your creditors, or any of them, by making such conveyance, or had you any other intent or purpose except to pay Sargent what you really owed him; and, if any other, what was it?

3. At the time you made the said conveyance, had you any intention to take the benefit of the insolvent law?

B. R. CURTIS, *Pl'ffs' atty.*

THE ESSEX COMPANY
vs.
ROBERT FARLEY and al.

MAR. 13.

Deposition of Adolphus Durant, of Methuen, in the county of Essex, and Commonwealth of Massachusetts, manufacturer, of the age of forty-seven years, a witness produced and examined under the foregoing commission on behalf of the plaintiffs.

I, Adolphus Durant, above named, being duly sworn, on oath depose as follows:

1. To the first interrogatory I answer: That I did execute such a conveyance bearing date on the day mentioned in the said interrogatory. The deed was given to secure him against his endorsement of a note for me of the amount of three hundred dollars. The consideration named in the deed will appear from the deed itself, a copy of which I annex. Mr. Jesse Sargent gave me a bond to re-convey, or, in case he sold the estate, to pay over to me the proceeds if he did not have to take up the note. I annex also a copy of the bond. The note above

mentioned was a note of three hundred dollars, which I got discounted at the Andover Bank, and Mr. Sargent endorsed it for my accommodation, and I made the conveyance above mentioned to secure him. It was dated at about the time that the deed bears date. I failed to pay the note, and Mr. Sargent paid it, and afterwards sold the estate. I had only an equity of redemption in the estate when I conveyed it to Mr. Sargent.

2. To the second interrogatory I answer: That at the time I made the said conveyance, I had no intent to deceive, delay, or defraud my creditors, and I had no other intent or purpose, in making it, than to secure Mr. Sargent against his liability as endorser of my note.

3. To the third interrogatory I answer: That at the time I made the said conveyance, I had no intention to take the benefit of the Insolvent law. I supposed at that time I should be able to work out and pay all my debts. I had been embarrassed six or seven years before, but I had paid off most of my debts, except the mortgages on my property, and when I made this conveyance to Mr. Sargent I expected to be able to pay the note which he endorsed.

ADOLPHUS DURANT.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

On this thirteenth day of March, A. D. 1846, in the city of Boston, in said county of Suffolk, personally appeared before me, the subscriber, a justice of the peace within and for the said county, the above-named Adolphus Durant, and he, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was to be taken, gave the foregoing answers to the several interrogatories annexed to the foregoing commission, and the same were by my order reduced to writing in his presence, and were by him subscribed in my presence. And I further certify, that no person was present at the taking of the said deposition except the deponent and myself, and a person employed by me to reduce the same to writing; and that the answers to the several interrogatories were taken in their order, and after the whole were written down they were read to the deponent before signing, and that the same were taken to be used in the cause in the said commission named.

Given under my hand and seal, at Boston, on the day and year above named.

GEO. T. CURTIS,
Justice of Peace and Counsellor at Law.

Fees taking deposition,	$5 00
For copies of papers annexed,	1 06
	$6 06

Copy of paper annexed by deponent to his answer to the first interrogatory.

GEO. T. CURTIS,
Justice of Peace and Counsellor at Law.

Know all men by these presents, That I, Adolphus Durant, of Methuen, in the county of Essex, and Commonwealth of Massachusetts, paper-maker, in consideration of six thousand dollars to me paid by Jesse Sargent, of Andover, in the county and Commonwealth aforesaid, trader, the receipt whereof I do hereby acknowledge, do, by these presents, give, grant, sell, and convey unto the said Jesse Sargent, the following described pieces of land lying in said Methuen, with the buildings thereon, viz., the piece of land, with my dwelling-house and barn thereon, containing about six acres, bounded northerly by Spiket river, easterly by the county road, southerly and westerly by land of Merrill Gage; being the same that I bought of Isaac Bodwell.

Also another piece of land lying eastwardly of the above described, on the opposite side of the road, containing about ten acres, with a paper mill and water privilege thereon, being the same which I bought of Joseph Bodwell, bounded, beginning at a stake and stones on the easterly side of said road, by land of Daniel Merrill; thence eastwardly, by said Merrill's land, to Spiket river; thence northwardly and westwardly, by said river, to the stone bridge at said road; thence southerly, by said road, to the first bound; with all the rights of flowing and other privileges appertaining to the same.

Also one other piece of land, lying southerly of the last-mentioned, bounded northerly by land of Daniel Merrill, eastwardly by Spiket river, southerly and westerly by land of said Merrill.

Also, *on* other piece of land, containing about half *a* acre, lying on the easterly side of said river, bounded westerly by said river, southerly, easterly, and northerly by land formerly of Enoch Poor; also a road, two rods wide, leading from the town road through land of said Merrill, to the two last described pieces of land, with a paper-mill standing on them, with the rights of flowing, building a dam, and all other rights and privileges, and subject to the reservations as set forth in my deed of the same from Abram Marland, dated Nov. 4th, 1840, recorded book 329, leaf 73; the whole above described being subject to six mortgage-deeds, to sundry persons, amounting in all to the sum of eleven thousand five hundred dollars. All the machinery in the mills is included in the foregoing sale.

To have and to hold the above granted premises to the said Jesse Sargent, his heirs and assigns, to his and their use and behoof forever. And I, for myself and my heirs, executors and administrators, do covenant with the said Jesse Sargent, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances, except the aforesaid mortgages; that I have good right to sell and convey the same to the said Jesse Sargent; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said Jesse Sargent, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Adolphus Durant, have hereunto set

my hand and seal, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and forty-three.

ADOLPHUS DURANT, [L. S.]

Signed, sealed and delivered, in presence of—(the words "to the first bound," and the word "leading," were interlined before signing)—
STEPHEN BARKER,
STEPHEN BARKER, Jr.

MIDDLESEX, *ss:*

MCH. 30, A. D. 1843.

Then the above named Adolphus Durant acknowledged the above instrument to be his free act and deed.

Before me.

(Signed) STEPHEN BARKER,
Justice of the Peace.
GEO. T. CURTIS,
Justice of Peace & Counsellor at Law.

Copy of paper annexed by deponent to his answer to first interrogatory.
GEO. T. CURTIS, *Justice of Peace.*

Know all men by these presents, that whereas I have this day received of Adolphus Durant a deed of conveyance of his dwelling-house and land attached to the same, and also of his two paper-mills with all the privileges, appurtenances and machinery attached to or used, or belonging to or with the same—now, therefore, in consideration thereof, I hereby promise and agree to and with the said Durant that I will, on demand of the said Durant, forthwith proceed to dispose of the same, either by renting or selling it, either by public or private bargain or sale, in such way and manner and at such time as said Durant shall direct; and after having thus leased, rented or sold the same, will make out and duly execute to the lessee or purchaser under my hand such lease or deed of the same to the lessee or purchaser as the nature of the transaction shall reasonably and properly require; and the proceeds of such rent or sale shall be applied first to the payment to myself of all reasonable costs and charges for my services and expenses in making such sale and *and* executing the conveyances thereof; secondly, to the payment of all debts, dues, advancements and liabilities which now are or shall then be in any way due or coming to me, or for which I shall be liable for and on account of said Durant, and the remainder of such proceeds I hereby promise to pay to the said Durant on demand.

Dated at Methuen, the thirtieth day of March, one thousand eight hundred and forty-three.

(Signed) JESSE SARGENT.
GEO. T. CURTIS,
Justice of Peace.

To the hon. the Justices of the Supreme Judicial Court to be holden at Ipswich, April 30, 1844, in and for the county of Essex:

Adolphus Durant, of Methuen, respectfully represents, that being insolvent on the twentieth of October, 1843, he petitioned to James H. Duncan, esq., a master in chancery in and for the county of Essex, for the benefit of the insolvent law of this commonwealth; that thereupon a warrant was issued and due proceedings had according to law.

And afterwards, to wit, on 17th Jan'y, 1844, the said master, though duly requested, refused to grant to your petitioner his discharge; whereupon he gave due notice of his appeal, and here enters the same and prays this court for his discharge.

By J. H. WARD, *his Att'y.*

To James H. Duncan, esq., a Master in Chancery in and for the county of Essex:

SIR: I hereby file my dissent and objection to the granting of Adolphus Durant a certificate of discharge from his debts, for the following reasons, viz:

1. That he, the said Durant, has property concealed by way of sales made a short time before filing his petition in chancery, which sales are, in my belief, only to keep property concealed from his creditors.
2. That the debt due me was contracted before the insolvent law was in force.

(Signed) JOSEPH FOSTER,
For himself and SETH DEWING.

Haverhill, Jan'y 17, 1844.

IN CHANCERY, *January* 17, 1844.

The foregoing dissent and objection were filed by said Joseph Foster this day.

Before me.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

A true copy from the original.

JOSIAH KEELY, *Clerk.*

At a legal meeting of the creditors of Adolphus Durant, of Methuen, in the county of Essex and commonwealth of Massachusetts, an insolvent debtor, holden at Haverhill, in said county, on the seventeenth day of January, A. D. 1844, before James H. Duncan, esq., of said Haverhill, master in chancery for and in said county, said master in chancery not seeing cause to grant a certificate of discharge to the said Durant, and from the claims of Durant's creditors, one-half in value of the said creditors objecting to the granting of said certificate, said Durant appeals to the supreme judicial court next to be holden at Ipswich, within said county, on the thirtieth day of April next, when and

where said appeal may be heard and determined by the said supreme judicial court.

(Signed) ADOLPHUS DURANT.

IN CHANCERY, *Jan'y* 17, 1844.

The above appeal is filed before me.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

A true copy from the original.

Attest: JOSIAH KEELY, *Clerk.*

A Record of Proceedings in the case of Adolphus Durant, of Methuen, in the county of Essex, paper-maker, an insolvent debtor, individually, and as a partner with Joseph Foster and Seth Dewing, under the firm of A. Durant & Co.

The original warrant in this case was issued by Hon. James H. Duncan, a master in chancery in and for said county of Essex, on the twentieth day of October, in the year one thousand eight hundred and forty-three. It was issued on the petition of the said Adolphus Durant, and directed to Jacob How, esq., of Haverhill, and was made returnable at the office of the said master in Haverhill, on Friday, the third day of November next, at ten o'clock in the forenoon.

The said master also appointed Josiah Keely, of said Haverhill, to be clerk in the case; and the said Josiah Keely was, on the second day of November, duly sworn before the said master to the faithful discharge of the duties of his said office, as appears by a certificate thereof, made and signed by the said master, and annexed to the said petition.

And now, on the third day of November, in the year one thousand eight hundred and forty-three, at the hour and place aforesaid, and before the said master, the said Jacob How, esq., the messenger in the case, made return of the warrant, with his doings thereon, which is filed in the case; whereby it appeared that he had duly executed the same according to the precept thereof. It also appeared by said return, and by the newspapers produced therewith by the said messenger, containing the public notifications of the issuing of the said warrant, and of the other matters required to be so published, that the first of said publications was made on the twenty-first day of October last.

The said Adolphus Durant presented a schedule of his creditors, with the debts due to them respectively; also of his estate, both real and personal, as delivered to Jacob How, esq., aforesaid, and which are filed in the case.

There then appearing no creditors to prove any claims against the estate of the said Durant, the master in chancery proceeded to the appointment of an assignee to the said estate, and did thereupon appoint Jacob How, esq., aforesaid, to the said trust; and he being present at said meeting did signify verbally his acceptance of the same.

Attest: JOSIAH KEELY, *Clerk.*

On the twenty-seventh day of December, in the year one thousand eight hundred and forty-three, the master in chancery ordered the assignee to call a second meeting of the creditors of the joint and individual estate of the said Durant, to be held at the office of the said master, in Haverhill, on Wednesday, the seventeenth day of January, in the year one thousand eight hundred and forty-four, at ten o'clock in the forenoon, at which meeting creditors might prove their claims, and the debtor would apply for his discharge; and the said assignee was required to publish notice of the time, place, and purposes of said meeting, on three different days, inside the newspaper called the Haverhill Gazette, printed in said Haverhill.

And now, on the seventeenth day of January, in the year one thousand eight hundred and forty-four, at the hour and place before named, and before the said master, the assignee, being present with sundry creditors, did make return of the order of notice, with his doings thereon.

At said meeting the said debtor presented amendments to his schedules of creditors and of property, which are filed in the case.

The master then proceeded to receive and examine the proof of debts claimed by creditors present or represented at said meeting, and made a schedule, certified under his hand, of all debts then proved and allowed before him, which schedule is filed in the case, and is as follows:

Schedule of debts due from Adolphus Durant, of Methuen, in the county of Essex, paper-maker, an insolvent debtor, individually and as co-partner in the firm of A. Durant & Co., to the several creditors hereunder named, this day proved and allowed before Hon. James H. Duncan, a master in chancery in and for said county of Essex.

To Burke & Child, of Boston, on ex'on.

Am't of debt for which judgment is rendered,	$42 00	
A'mt of cost accruing,	6 34	
		$48 34
To Seth Dewing, of Needham, and Jos. Foster, of Newton.		
Claims for am't of award,	$5,996 37	
½ of fees of referees,	180 00	
Int. on the above from Oct. 2, 1843, to Oct. 21, '43,	19 56	
Costs of suit commenced at Oct. term S. Jud. Court,	10 97	
		6,206 90
Total,		$6,255 24

Witness my hand, this seventeenth day of January, A. D. 1844.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

The said Durant then personally appeared and took and subscribed the oath by law prescribed, which is filed in the case. He also made application for his discharge, whereupon Joseph Foster, on behalf of himself and Seth Dewing, filed a dissent and objection to the granting the same; and upon the said master declining to grant a certificate of discharge to the said Durant, he did forthwith file an appeal from said decision to the supreme judicial court, next to be holden at Ipswich, within said county of Essex, on the thirtieth day of April next, and the said dissent and objection, with the appeal, are both filed in the case.

Attest: JOSIAH KEELY, *Clerk*.

A true copy from the original records.

Attest: JOSIAH KEELY, *Clerk*.

To Jacob How, of Haverhill, in the county of Essex, and Commonwealth of Massachusetts, gentleman:

Whereas, Adolphus Durant, of Methuen, in the county aforesaid, paper-maker, has this day presented to me, James H. Duncan, a master in chancery in and for said county of Essex, his petition, setting forth that individually, and as co-partner with Joseph Foster and Seth Dewing, under the name of A. Durant & Co., he is indebted in divers sums of money, amounting in the whole to five hundred dollars, which he is unable to pay in full, and praying that a warrant may issue to take possession of his estate for the benefit of his creditors, and that such further proceedings may be had as the law prescribes for obtaining a discharge from his said debts:

You are therefore hereby authorized and required, as the messenger in this case, to take possession of all the estate, real and personal, of the said Adolphus Durant, excepting such as is by law exempted from attachment, and all his deeds, books of accounts, and papers, and the same safely to keep until the choice or appointment of an assignee or assignees of the said estate, when you shall deliver the same to such assignee or assignees. And you are also required to give notice of the issuing of this warrant, by publishing notifications thereof, on two different days in two successive weeks, in the newspapers called the Haverhill Gazette, printed at Haverhill, and the Daily Advertiser, printed at Boston, the first publication to be made as soon as may be after the receipt of this warrant, and therein forbid all persons indebted to the said Durant, or that have any of his effects, to pay or deliver the same to any person but to you, or to the assignee or assignees that shall be hereafter chosen or appointed; and in the same advertisement you will give notice that all transfers of property by the said Durant are now forbidden by law, and will also notify and call a meeting of all the creditors of the said Durant, to be held at my office, in Haverhill, on the third day of November next, Friday, at 10 o'clock in the forenoon, when and where they are to come prepared to prove their debts, and then to proceed to the choice of an assignee or assignees of the estate of the said Durant, and to do such other business in relation to the

said estate as may then come before them; and you are to make return of this warrant, with your doings thereon, at the time and place last above mentioned.

Dated at Haverhill aforesaid, this twentieth day of October, in the year one thousand eight hundred and forty three.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

NOVEMBER 3, 1843.

By virtue of the within warrant, to me directed, I have taken possession of all the estate of the within named Adolphus Durant that has come to my knowledge, except the goods and chattels following, which I have left, as being by law exempted from attachment, that is to say, the wearing apparel necessary for himself, the said Durant and his wife, and his four children; three beds and bedsteads, with the necessary bedding for each; and certain household utensils, not exceeding the value of fifty dollars; also one stove; provisions not exceeding the value of fifty dollars; firewood not exceeding the value of ten dollars, and 1 swine. I have also taken all the books of accounts of the said Durant's, and all his deeds and papers relating to his said estate, that have come to my knowledge; and now I have all the said goods and effects, and other things so taken by me, ready to be delivered to the assignee or assignees who shall be chosen in this case. I further certify, that I have published the notifications prescribed in the said warrant two weeks successively in the newspapers called the Daily Advertiser and the Haverhill Gazette, the first of which publications was made in the said Gazette on the 21st of October last, and in said Advertiser on the twenty-third day of said October; and I do herewith produce 1 copy of each of the said newspapers in which the said publications were made.

(Signed) JACOB HOW, *Messenger.*

A true copy from the original.

Attest: JOSIAH KEELY, *Clerk.*

To the honorable the Judge of Probate for the county of Essex, or to any Master in Chancery in said county:

Humbly shows Adolphus Durant, of Methuen, in the county aforesaid, paper-maker, that individually, and as a co-partner with Joseph Foster and Seth Dewing, under the firm of A. Durant & Co., he is indebted in divers sums of money, amounting in the whole to five hundred dollars, which he is unable to pay in full, and he wishes to surrender all his property for the benefit of his creditors, and to obtain his discharge from his said debts, according to the statute in this behalf provided.

Wherefore, he prays that a warrant may be issued for taking possession of his estate, and that such further proceedings may be had in the premises as the law in such case prescribes.

(Signed) ADOLPHUS DURANT.

Haverhill, Oct. 20, 1843.

ESSEX, *ss:* OCT. 20, 1843.

The foregoing petition was this day presented to me, James H. Duncan, a master in chancery in and for the said county of Essex, and therefore I issued a warrant, as by law prescribed, to Jacob How, of Haverhill, as messenger in this case, to take possession of the estate of the said Adolphus Durant, which warrant is returnable at my office in said Haverhill on the third day of November next, at ten o'clock in the forenoon; and I have appointed Josiah Keely, of said Haverhill, to be clerk in the case.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

ESSEX, *ss:* Nov. 2, 1843.

Personally appeared Josiah Keely, of Haverhill, and made oath that he will faithfully perform the duties of clerk in this case.

Before me.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

A true copy from the original.

Attest: JOSIAH KEELY, *Clerk.*

I, Adolphus Durant, do swear, that the account of my creditors contained in the schedule made and signed by me, and now in the hands of the assignee appointed by the master in chancery, is in all respects just and true, according to my best knowledge and belief.

And I do further swear, that I have delivered to Jacob How, the messenger appointed in that behalf, all my estate, (except such parts thereof as are by law exempted from attachment, and such as have been necessarily expended for the support of myself and my family,) and all my books of accounts and papers, relating to my said estate, that were within my possession or power when the same were demanded of me by the said messenger; that I have delivered to my assignee all such of my said estate, books and papers, as have since come into my possession; and that if any other estate, effects or other things, which shall or ought to be assigned and delivered to the said assignee, shall hereafter come to my knowledge or possession, I will forthwith disclose or deliver the same to the said assignee. And I do further swear, that there is not any part of my estate, or effects, made over or disposed of in any manner for the future benefit of myself or my family, or in order to defraud any creditors.

(Signed) ADOLPHUS DURANT.

ESSEX, *ss:*

Subscribed and sworn to, this seventeenth day of January, A. D. 1844, before me.

(Signed) JAMES H. DUNCAN,
Master in Chancery.

A true copy from the original.

Attest: JOSIAH KEELY, *Clerk.*

ESSEX, *ss:* MAY 21, 1851.

The foregoing are true copies of the papers on file in the case of Adolphus Durant, petitioner for discharge under the Insolvent law.

Attest: A. HUNTINGTON, *Clerk.*

At the supreme judicial court, April term, 1844, on a hearing of the parties in this case, the prayer of the petitioner for a certificate of discharge from his debts was refused.

Attest: A. HUNTINGTON, *Clerk.*

I have had from 8 to 12 hands, 20th October, 1843; labor paid me. I paid in May and June for stock; my contract was to pay once a month. This was within, C. H. 124, sect. 3; I have met that agreement; begun in May, 1842, to May, 1843. Mr. Tenney was liable as surety with me; I took it away every week; $100 per week; sometimes I paid in advance, and sometimes was behind. 29th April, I gave mortgage of 70 tons paper stock, ($;) 7 tons to Tenney, Lucas & Durant; the hands worked it into paper, and I paid the hands in paper. Mr. Tenney made advances at the time I gave this mortgage; the hands were afraid to work unless I gave security; Lucas had no more than three months due; I have no book or paper which will show how much was due at the time. I did not think myself insolvent till .

Daniel Merrill.—I had demand against him, 30th April, 1843; $50, for labor; it was done last winter; I have got $20, got from James Durant. James and Adolphus gave me an order for a wagon, signed by James Durant. He told me he had put property into James's hands to pay the hands; this was after 30th April; I had his note, dated that year.

James Durant.—My brother was owing me $75, to secure me and rest of hands; $300 or $400 of moneys paid out to the hands.

Mr. John Tenney.—I have mortgage of personal property before.

Mr. Lion.—Durant said, mill had been sold to Barker.

A true copy of a paper on file in said case.

Attest: A. HUNTINGTON, *Clerk.*

DR *A. Durant in account with Joseph Foster.* CR.

1837.			1837.		
June 10	To cash	$50 00	Sept. 20	C. & W. H. Magarge, note dated Sept. 14, on 2 months	$231 92
Aug. 1	"	293 45		Turner & Fisher, note dated September 14, on 4 months	86 50
July 10	"	165 00		Turner & Fisher, note dated September 14, on 60 days	86 50
	To discount, September 20th	10 52	Dec. 27	Spear & Mudge, draft dated December 16, on 4 months	200 00
	" December 27th	5 75		C. & W. H. Magarge, note on 5 months, dated November 24	237 55
	collection, March 14, on $215 00	6 30	1853.		
	discount " 29, Broder's note	2 63	Mar. 15	Turner & Wheelright, note 60 days	215 02
	" " Hilliard, G. & Co.	15 00	19	Received of Haywood & Norton, Otis Broder & Co.'s note, dated January 24, on 6 months	124 00
	" April 6, Otis Spear	7 12		Hilliard, Gray & Co., note dated March 7, on 9 months	357 50
	" " 7, Magarge	14 41	April 6	C. & W. H. Magarge, note 6 months	480 55
	" " 28,	12 45	7	Otis Spear, acceptance 6 months	178 06
May 18	To cash paid G. W. Ellis' note	304 89	28	Grant & Daniel, note, 5 months, on Turner & Wheelright	250 00
Jan. 5	" on H. and Norton's notes at the Charlestown Bank	651 19	28	Grant & Daniel, note on 6 months	165 34
	balance	304 52	21	Cash of Haywood & Norton	201 00
			1839.		
		$1,843 23	Jan. 10	" "	29 29
	my services				
	notes paid Essex Bank	1,000 00			
		$2,843 23			$2,843 23

(A.)

Messrs. A. Durant & Co. to A. Durant, DR.

1836.					
May	23	To cash paid B. Smith - - -	$82 25		
		for boarding Smith - -	12 37		
		Paid Grant and Daniel - - -	24 75		
June	6	R. O. Sullivan's bill - -	14 67		
	10	W. Parker, for yarn - -	12 00		
	25	J. B. Loud, for work - -	22 50		
	26	E. Sargent, for wood - -	194 20		
Aug.	9	N. Currier & Co., for leather	18 27		
				$381	01
		Anniss & Dudley - - -	$48 47		
		Bodwell & Derby - - -	7 53		
		Carleton & Foster - -	34 81		
		Sundries, as per memorandum	60 23		
Sept.	19	John Russ, for wood - -	48 22		
	29	Mr. Simons - - - -	7 00		
	29	for boarding Simons - -	1 43		
	30	Francis Frye, 2d - - -	71 92		
				279	61
Oct.	20	J. H. Peabody - - -	$76 46		
		J. Russ, for wood - - -	85 00		
		J. S. Morse - - - -	107 00		
	19	for stoves, brooms, and pails -	24 86		
	28	for insurance on paper - -	3 63		
Nov.	24	J. S. Morse - - - -	418 00		
Oct.	10	for grindstone - - -	8 50		
	15	William Swan, for wood -	17 50		
				740	95
		E. Gage, for teaming - -	$195 14		
	12	Anniss & Dudley - - -	10 00		
	15	taxes for 1836 - - -	31 98		
		A. Palmer, for work - -	3 50		
	23	for stock of C. Bodwell - -	271 13		
	26	J. Stevens, for teaming - -	3 00		
		S. Chaplin, for work - -	4 00		
		tolls - - - - -	3 25		
1837.				522	00
Jan.	11	J. W. Carleton & Co. - -	$6 63		
	19	for leather - - - -	7 25		
	26	for leather and vice - -	5 45		
	31	B. Woodbury, for wood -	6 75		
Feb.	20	Churchill & Tyler - -	2 59		
	25	for coal of Richardson - -	14 00		
March	1	B. Hall, for felt reams - -	6 50		
	2	J. P. White, for wood - -	26 32		
				75	49

March	2	Paid G. W. Cook, for wood - -	$17 50		
	10	for screens - - - -	8 25		
	10	for wrench - - - -	2 00		
	16	C. Patte, for wood - -	35 25		
	21	John Stevens, for teaming -	3 00		
April	13	P. C. Jones - - - -	9 25		
May	1	J. Stevens, for lumber - -	50 00		
	1	J. Snelling, for wood, - -	45 00		
					$170 25
July	12	Interest on N. F. Safford's acc't	$8 94		
		J. Walker, for teaming - -	224 81		
Oct.	10	Methuen Co.'s bill - -	10 13		
		E. Carpenter, for painting -	3 32		
		J. C. Carleton & Co. - -	15 54		
		I. Bailey, for sawing wood -	7 70		
		N. Bodwell, for work - -	35 00		
		S. Bartlett, for iron - -	87		
					306 31
		For piece of pump - - -	$3 50		
		Railroad ticket for S. Dewing -	88		
		Horse to Ispwich for S. Dew-			
1835.		ing - - - - - -	1 75		
May	10	5 books - - - - -	6 38		
July	14	Rags - - - - -	18 84		
	21	22 baskets - - - -	15 00		
		Soap - - - - -	5 00		
		Labels - - - - -	8 00		
		Wood - - - - -	20 00		
					79 35
		Cash p'd workmen up to May 9, 1837 - - - -		$3,667 25	
		Interest on money - -		80 40	
		Rent of mill 13⅓ months -		1,333 33	
		My time from April 1st to May 10th, putting up machine - - -		79 20	
		Horse keeping, and wear and use of carriages -		150 00	
					5,310 18
		Horse keeping, and use of horse from Apr. 10th to May 10th - - -		$30 00	
		My expenses - - -		150 00	
		Cash p'd for sundry items, see mem.		112 89	
		" " Bal. of P. O. Richmond's account - - -		85 76	
Aug.	15	" " I. Marshall - - -		11 40	
					390 05

Aug.	15	Cash p'd John Russ to settle dispute on wood - - -	$13 00		
		" Hazen Hazeltine for lime	1 32		
1839.					
Jan'y	2	" Dowing & Austin for bbl. oil, bought March 2d, 1837, and interest -	73 08		
May	14	" John Tenney on Varney's note at the Essex Bank	111 90		
		" Phelps & Spofford for bill of felts - - -	55 39		
		" Postage of letters - -	50		
					$255 19
1836.					
May	1	1 Dryer machine sold to Phelps & Spofford -	$1,000 00		
		Stock in the mill - -	285 99		
		2 hand dryer felts - -	12 00		
		2 cords wood - - -	10 00		
		2 galls. oil - - -	2 25		
					1,339 24
1841.					
May	12	Cash p'd S. B. & Co. for castings in 1836 - - -	$114 62		
		Interest, 4 years - -	26 48		
Oct.	14	Paid Joshua Twing - -	81 63		
					222 73
					$10,072 00

1837.

May & June Expenses for manufacturing paper, and my services for May and June:
Use of the mill for May and June, 1837 -
Teaming and trucking - - - -
Paid assessment at the insurance office at Worcester - - - - - - $75 00

Dr. *Foster & Dewing in account.*

1837. To paper delivered Haywood & Norton:

May	9	To 50 reams news, 20-30, 22 lbs., a $2 87½ - - -	$143 75	
	13	160 " news, 20-30, 22 lbs., a $2 87½ - - -	460 00	
	23	86 " fine medium, 21-37, 31 lbs. a $6 00 - - -	516 00	
		10 " " demi, 19½-23½, 22 lbs., a $4 00 - - -	40 00	
June	8	16 " news, 21-30, 22 lbs., a $2 87½ - - -	46 00	

June	12	To 190	reams fine demi, 19½-23½, 22 lbs., a $4 00 - - -		$760 00	
	15	52	" news, 21-30, 22 lbs., a $2 87½ - - -		149 50	
	22	162	" news, 21-30, 22 lbs., a $2 87½ - - -		465 75	
	27	130	" news, 21-30, 22 lbs., a $2 87½ - - -		373 75	
	29	98	" demi, $2 75 - - -		269 50	
July	17	20	" news, 25-36, 34 lbs., a $4 25 - - -		85 00	
						$3,309 25
Sept.	1	32	" 24-36, a $4 50 - -			144 00

Messrs. A. Durant & Co. to Seth Dewing, Dr.

1836.						
Feb'y 23	To cash pd. for postage		3			
March 8	" " 416 ft. No. 3 plank, J. & T. Howe		$11 23			
8	" " 1,122 ft. No. 4 plank, J. & T. Howe		17 95			
8	" " 1,000 Hemlock plank, S. Piper & Co.		12 00			
10	" " 722 lbs, grindstone 1½	9	10 33	$52 04		$2 54
22	" " acc't books, Jones & Holman		5 25			
28	" " ins. on Machine 12 50, postage 12		12 62			
29	" " 1,049 ft. No. 3 boards, J. & T. Howe		28 32			
29	" " 143 ft. Spruce joist, J. & T. Howe		2 14			
29	" " 367 ft. No. 3 plank, J. & T. Howe		11 01			
29	" " 406 ft. No. 4 boards, J. & T. Howe	29	6 50	65 84		3 00
April 13	" " S. Kelley for freight of Machine		25 92			
16	" " M. Kent for moving part of do. into store and loading do		1 50			
18	" " ins. on mill & machinery		111 25			
19	" " 200 ft. No. 4 plank, A. H. Bird		3 20			
19	" " 1,398 ft. No. 3 boards 37 74, postage 12	18	37 86	179 73		7 61
May 4	" " N. Kelley, freight of machine 20 17, postage 6	4	20 23	20 23		7 79
9	" pr. receipt	9	60 00	60 00		2 33
17	" " receipt	17	100 00	100 00		3 75
22	" " receipt	22	30 00	30 00		1 10
June 4	" " receipt		1 50			
10	" pd. Grant & Daniel, brass wire	4	9 05	159 05		5 51
May 26	Paid Oliver Fernald's bill	26	83 07	83 07		2 99
June 10	To cash per receipt $200, do. $75	10	275 00	275 00		9 26
17	Paid Perrin & Ellis for 105 lbs. Sweeds iron, a 5½		5 77			
17	" Downes, Austin & Co., for 33 galls. oil, a 96	17	31 68	37 45		1 20
23	To cash per receipt	23	300 00	300 00		9 45
July 1	" paid J. C. Gardner & Co. pr. receipt	1	900 00	900 00		27 00
2	" " for postage		08			
4	" " R. O. Sullivan for labor		21 87			
5	" " blank draft 50, red ink 13	4	63	22 58		69
9	" pr. receipt	9	200 00	200 00		5 77
19	Paid C. Farewell your order 16 50, cash pr. receipt 30 00		46 50	46 50		1 28
			$2,531 49	$2,531 49		$84 27
July 21	" J. L. Gardner pr. receipt		600 00			
23	" Postage 21 25, pd. for acc't book $1		1 21			
28	" Postage 8, Aug. 3, pd. postage 21	21	29	601 50		16 15
Aug. 6	To cash pr. receipt	6	100 00	100 00		2 42
8	" of Charlestown Bank		200 00			

Account.—Continued.

1836.						
Aug. 10	Pd. J. L. Gardner & Co., ins. on rags 1 83, postage 2	8	$1 85	$201 85	$4 83	
16	To cash pr. receipt 100 19, postage 10, 25, postage 8	16	100 18	100 18	2 27	
Sept. 13	" per receipt	13	600 00	600 00	10 90	
17	Pd. Phelps & Spofford's note	17	1,000 00	1,000 00	17 50	
28	To cash pr. receipt		300 00			
Oct. 7	" pd. for postage	28	13	300 13	4 70	
12	" pr. memorandum check	12	25 00	25 00	33	
18	" pr. receipt	18	150 00	150 00	1 85	
Nov. 1	" paid J. S. Morse	1	200 00	200 00	2 00	
5	" " C. Parker, interest on note 8 15—15th, postage 12	5	8 27	8 27	03	
16	" " Haywood & Norton's note	16	604 70	604 70	4 64	
17	Paid Phelps & Spofford's note	17	1,010 00	1,010 00	7 58	
24	Cash $11, cash $30, cash $218, ½ doz. pulleys 64	24	259 64	259 64	1 65	
Dec. 5	Paid Wm. Rutter's note	5	99 00	99 00	40	
6	" Hazen Hazeltine your order	6	60 00	60 00	26	
9	Cash pr. receipt	9	350 00	350 00	1 34	
12	Paid postage		10			
20	" " 35, cash $350	20	350 35	350 45	70	
27	Methuen Co.'s draft	27	104 20	104 20	09	
						164 02
31	To int. on this acc't to Jan. 1, 1837		164 02	164 92		
31	" my services		257 00	257 00		
31	" int. on cash on hand, and int. paid in advance		43 00	43 09		
			$9,120 52	$9,120 52		
	Amount of Cr.		4,511 10			
	Balance due Jan. 1, 1837		$4,609 42			

Cr.

1836.						
June 10	By cash for Harrington & Co.'s note	10	$175 00	$170 50	$5 72	
10	" " Harrington & Co.'s note	10	173 85	168 60	5 69	
July 7	" " Draft on Norman & Steel	7	257 73	253 73	7 41	
18	" " Heywood & Norton, accept'e	18	400 00	387 80	10 61	
18	" " Heywood & Norton, accept'e	18	400 00	389 80	10 66	
Aug. 19	" " Harrington & Co.'s note	9	120 00	117 06	2 79	
19	" " Harrington & Co.'s note	9	120 00	117 42	2 79	
27	" " Draft on Norman & Steel	27	1,200 00	1,154 60	24 06	
Sept. 30	" " Draft on C. & W. H. Margarge	30	209 00	202 50	3 06	
Nov. 12	" " Heywood & Norton's note	12	500 00	492 25	4 10	
12	" " Heywood & Norton's note	12	500 00	489 75	4 03	
Dec. 16	" " Heywood & Norton's note	16	500 00	484 83	1 29	
						$82 26
31	By interest to Jan. 1st, 1837			82 26		
				$4,511 10		

Messrs. A. Durant & Co. to Seth Dewing, Dr.

1837.					
Jan. 4	Cash pr. receipt $20, postage 20		$20 20	$20 20	
5	Paid Stevens & Eaton's bill	5	176 78	196 98	$5 78
7	Cash pr. receipt $170, postage 10		170 10		
	Pd. Stageman to carrying $120 to Salem 25, postage 21	7	46	170 56	4 96
17	" Phelps & Spofford's note, $1,020, cash $50	17	1,070 00	1,070 00	29 25
20	" J. L. Gardner & Co. on note	20	481 65	481 65	13 01
26	" J. L. Gardner & Co.'s note	26	1,011 53	1,011 53	26 31
27	Cash pr. receipt $200, postage 22, postage 3	27	200 25	200 25	5 17
Feb'y 1	Pd. E. Gage pr. receipt $50, W. T. Parker's bill $41 38	1	101 38	101 38	2 53
3	Sent Norman & Steel to help take up draft	3	500 00	500 00	12 42
7	Pd. Mr. for copy of discounts at E. Bank $1, postage 21		1 21		
9	Cash pr. receipt $125, postage 21, postage 2	9	125 23	126 44	2 98
16	Paid Oliver Fernald's bill		16 58		
18	" Downer, Austin & Co.'s bill		62 00		
20	" Seth Dewing, Jr., your order		50 00		
22	" J. S. Bartlett per receipt	19	40 00	168 58	3 72
11	" Heywood & Norton pr. receipt	11	500 00	500 00	11 67
18	" S. Piper & Co.'s bill $29 13, postage 21	18	29 34	29 34	64
March 3	" Paul Willard $10, A. W. Austin 10		20 00		
4	" Putnam & Pratt's note		584 60		
4	" N. F. Safford	4	130 00	734 60	14 34
6	" I. S. B. Alleyne commission for cashier's check		7 45		
11	" Postage 8, Heywood & Norton pr. receipt $500	11	500 08	507 53	9 31
17	" F. Bank bill of discounts $1, Phelps & Spofford $1,040 40		1,041 40		
17	" J. S. Hoogs your order	17	60 00	1,101 40	19 09
22	" For acct. book 50, Rowlett's table of interest $5		5 50		
22	" Your acceptance to Eben Gage $30 39, less $1 89		28 50		
23	" Wm. Butler's note $100, 1-2 quire ruled paper 25	23	100 25	134 25	2 21
25	" Insurance	25	140 00	140 00	2 26
April 3	" Levi Bliss for goods $97 33, R. O. Sullivan's order $143 20	3	240 53	240 53	3 53
4	" Heywood & Norton pr. receipt	4	300 00	300 00	4 35
10,11,17, 18	" Wm. Butler on note $50 bal. of do. $54 40, postage 28	10	104 68	104 68	1 44
April 25	Sent Norman & Steel to help take up draft	22	300 00	300 00	3 45
			$8,119 70	$8,119 70	$178 42
25	Pd. Moses Carleton & Co.'s bill $31 48				
28	" Heywood & Norton's draft $608 11, master of cars 50		608 61		
	" Postage 21		31 69		
28	" Postage 10, E. O. Sullivan's order $14	28	14 10	654 35	6 88
May 1	" Check on E. Bank payable the 10th	1	50 00	50 00	50
4	" Heywood & Norton pr. receipt	4	400 00	400 00	3 87

Account.—Continued.

1837.					
May 3	Paid J. Cloyd E. Gage's note $102 73, Cloyd & Hanson's bill $22 69, postage 12	8	$125 44	$125 44	$1 15
10	Cash pr. receipt		100 00		
11	Rec'g mortgage 25, I. S. B. Alleyne $5		5 25		
12	Cash pr. receipt	11	100 00	205 25	1 71
13	Heywood & Norton's account		304 74		
13	Master of cars 50, postage 14	13	64	305 38	2 44
20	Phelps & Spofford's note ($510 and int $10 77)	20	520 67	520 67	3 65
29	P. O. Richmond's note	29	132 81	132 81	73
June 9	E. Gage's note	9	109 89	109 89	10
16	Heywood & Norton's note	16	500 00	500 00	1 25
22	Heywood & Norton's account	22	796 28	796 28	1 19
23	Heywood & Norton's note	23	500 00	500 00	67
24	Sent N. & S. to help take up draft $375, exchange 63	24	375 63	375 63	44
					$203 28
24	Interest to July 1st, 1837		203 28	203 28	
24	My services up to July 1st, 1837		200 00	200 00	
24	Int. on cash on hand and paid in advance		22 62	22 62	
			$13221 40	$13221 40	
	Amount of Cr. to July 1, 1837		$10936 61		
			$2284 79		

Cr.

1837.					
Jan. 6	By cash for draft on N. & Steel	6	$300 00	$292 90	$8 55
17	" " of P. & Safford to help take up note	17		510 00	13 94
21	" " " H. & Norton's note	21	300 00	296 00	7 89
25	" " " H. & Norton's note	25	400 00	392 73	10 22
25	" H. & Norton's note at 6 months, endorsed to J. L. G. & Co	25	1,000 00	969 50	25 20
25	" Phelps & Spofford's note, (N. B. accr'd)	25	1,040 00	1,030 52	26 81
Feb'y 7	" Draft on N. & Steel	7	500 00	483 33	11 59
11	" Draft on Turner and Wheelright	11	400 00	383 80	8 96
11	" Draft on Norman & Steel	11	500 00	485 08	11 32
11	" Draft on C. & W. H. Magarge		500 00	481 58	11 25
23	" H. & Norton	23	500 00	490 00	10 45
M'ch 10	" Heywood and Norton's account		700 00	685 65	12 69
15	" 261 bunches matches		10 87	10 87	
24	" Heywood & Norton's note		1,000 00	980 33	15 84
29	" S. J. Varney's note		100 00	97 00	1 49
April 22	" Heywood & Norton's note		1,000 00	969 50	11 15
May 2	" Draft on N. & Steel		300 00	291 50	2 87
20	" Beals & Green's note		603 75	585 74	4 00
June 1	" Cash of Heywood & Norton			100 00	50
9	" Cash of Heywood & Norton			100 00	37
16	" Norman & Steel's acceptance		500 00	487 00	1 22
23	" Draft on Norman & Steel		375 00	366 49	49
24	" Cash of Heywood & Norton			250 00	29
	" Interest to July 1st, 1837			197 09	$197 09
				$10936 61	

Messrs. A. Durant & Co. to Seth Dewing, DR.

1837.					
July 1	To cash pd. Freeman's Bank for protest (N. & S.)		$5 00		
6	Pd. P. O. Richmond's note		248 91		
3	" Putnam & Pratt's note		258 28		
8	" Heywood and Norton's draft	6	780 62	$1,221 84	$37 93
14	" P. O. Richmond's note		250 00		
18	" F. Bank interest	14	1 00	251 00	7 03
18	" Heywood & Norton's draft	19	780 63	780 63	21 22
21	" Heywood & Norton's note	21	1,000 00	1,000 00	26 83
22	" Heywood & Norton's draft	22	324 02	324 02	8 64
28	" J. L. Gardner & Co.'s note, H. & N. note	28	1,000 00	1,000 00	25 67
29	" F. Bank interest		25		
Aug. 1	" Heywood & Norton's draft		793 83		
11	" Postage	1	48	794 56	19 88
23	" Norman & Steel's draft (protested)		304 00		
28	" Postage	23	21	304 21	6 54
Sept. 2	" R. G. Shaw, A. Durant's deaft on A. D. & Co	3	377 84	377 84	7 50
13, 14	" Postage		33		
23	" Dft. on Norman & Steel (protested)	23	379 00	379 33	6 26
Oct. 7	" Draft on Norman & Steel	7	500 00	500 00	7 08
13	" R. G. Shaw & Co., A Durant & Co.'s acceptance		1,008 73		
13	" Cost of protest	13	3 31	1,012 04	13 32
Dec. 13	" Protest at Tremont Bank	13	3 85		
20	" Postage	13	06	3 91	1
					$187 91
	" Interest to Jan. 1st, 1838		187 91	187 91	
	" Interest on cash on hand, and paid in advance, 01		68 60	68 60	
	To my services		200 00	200 00	
			$8,476 86	$8,746 86	
	Amount of cr. to Jan 1st, 1838		1,348 42		
	Balance due Jan. 1st, 1838		$7,128 44		
	To wrong credit of Spear & Mudge, accept. 200 rectified $194 27				
	By Joseph Foster and credited by him in account with interest 13				
			194 40		
			$7,322 84		

CR.

1837.					
July 18	By cash for Beals & Green's note,				
	" " $661 25	18	$641 42	$641 42	$17 53
Aug't 26	" " left at Heywood & Norton's				
	to pay Varney's note	26		100 00	2 10
Sept. 15	" " for Beals & Green's note	15	293 25	286 75	5 12
Nov. 25	" " for John Putnam's note, re-				
	ceived of W. & Carter	25		100 48	62
Dec. 28	" " for Spear & Mudge's accept-				
	ance, $200	28	200 00	194 72	13
					$25 50
	" interest to January 1st, 1838			25 50	
Nov. 11	" Rec'd of H. & Norton E. W. Ellis'				
	note, Oct. 12, a 6 mos		$465 11	$1,348 42	
	less discount 54		12 09		
				453 02	3 78
Dec. 25	" Rec'd of H. & Norton, in cash		$370 00	370 00	37
				$2,171 44	$4 15
	Charged back to Joseph Foster, rec'd				
	and credits it in his acc't			4 15	
				$2,175 59	

Messrs. A. Durant & Co. to Seth Dewing, DR.

1838.					
Jan'y 10	To cash pd. Richard Robins, his bill..		$4 00		
16	" " for postage.....	10	84	$4 84	15
1837.					
Aug't 14	" " for Thos. W. Churchill's note.....		298 19		
14	" " for Thos. W. Churchill's note.....	14	100 00	398 19	$21 23
1838.					
Feb'y 20	" " for postage.....		26 00		
March 21	" " for postage.....		29 00		
19	" " J. Cloyd, his bill, postage and services.....		2 70		
23	Pd. A. Durant's order and interest from August 9th, 1837.....		69 78		
23	" D. Merrill's bill and interest from August 10th, 1837.....		67 43		
23	" D. Merrill, jr.'s, bill and interest from August 10th, 1837.....		131 28		
23	" A. Bodwell's bill and interest from August 10th, 1837.....	23	65 56	337 30	5 51
31	" Turner & Wheelwright's accept. to Charlestown Bank, $400, interest and cost, $19 09.....		419 09		
31	" For advertising dissolution of co-partnership.....	31	1 13	420 22	6 37
1827.					
Aug't 27	" P. O. Richmond's note to Lowell Bank.....		500 00		
29	" P. O. Richmond's note to Lowell Bank.....	28	500 00	1,000 00	50 50
1838.					
May 4	" Postage.....		33		
19	" Postage.....		14		
25	" Postage.....		6		
June 14	" Postage.....		3		
28	" Postage.....		47	1 03	
30	To interest to July 1st, 1838.....		83 75	83 75	83 75
30	" " on cash on hand, and interest paid in advance.....	10	11 11	11 11	
30	" my services up to July 1st, 1838..		60 00	60 00	
				2,316 44	
	Amount of Cr. to July 1st, 1838.....			1,134 43	
	Balance due July 1st, 1838.....			$1,182 01	
	Add wrong credit, Magarge's note rec'd by Joseph Foster.....		233 11		
	and credited by him in acc't—int....		4 08	237 19	
				$1,419 20	

CR.

1838.					
Jan. 16	By pay for J. H. Wilkins & B. B. Carter's note	16	$112 92	$112 92	$3 11
22	cash of Heywood & Norton, on settlement for part of their notes given up	22	15 93	15 93	42
Feb. 24	cash of Lowell Bank for Geo. W. Ellis's note, $385 25	24	373 50	373 50	7 90
March 16	cash for Magarge's note	16	233 11	233 11	4 08
16	cash paid by Heywood & Norton to J. L. Gardner & Co.	16	233 34	233 34	4 08
June 14	cash for R. S. Davis's note, $146 63	14	145 63	145 63	41
					$20 00
30	interest to July 1st, 1838			20 00	
				$1,134 43	
Feb. 6	cash of Heywood & Norton, received of them			318 19	7 63
				$1,442 62	
	Wrong charged back, Joseph Foster rec'd it and credits it in his account.			7 63	
				$1,450 25	

Messrs. A. Durant & Co. to Seth Dewing, DR.

1838.						
Aug.	27	To cash paid for postage.....			03	
Oct.	27	Paid White & Dearborn's bill		$107	00	
Nov.	1	" postage.....			19	
Dec.	21	" postage.....	27		08	$107 30	$1 16
	28	Settled with C. D. Bond, Eben Gage's order; Aug. 4, Heywood & Norton paid Gage $10, and charged the same to me; gave Bond my note dated August 4th, 1837, for $22 61.....	4	32	61	32 61	2 79
		Interest to Jan. 1st, 1839.....		3	95	3 95	3 95
		" on interest paid in advance....					
		To my services to Jan. 1st, 1839.....		20	00	20 00	
				$163	86	$163 86	

CR.

1837.						
July	27	By cash for Norman & Steele's dft. $200	27	$198	00	$198 00	$5 12
Aug.	13	" " " George Clark's note.....	13	50	98	50 98	1 18
Oct.	20	" " " Heywood & Norton's note	20	233	33	233 33	2 80
Nov.	26	" " " Heywood & Norton's note	26	227	19	227 19	1 36
		" Interest to Jan. 1st, 1839.....				10 46	10 46
						$719 96	
		" " on interest in advance.....				5 53	
						$725 49	
		Amount of Dr. to Jan. 1st, 1839...				163 86	
		Balance of Cr. to Jan. 1st, 1839..				$561 63	

Messrs. A. Durant & Co. to Seth Dewing, DR.

1838.	*Sixth Bill.*				
Feb. 20	To cash paid for postage.....		28	28	
Mar. 19	" " " " postage.....		11	11	
17	" " " " postage.....		8	8	
April 24	" " " " postage.....		8	8	
	Interest for interest paid in advance....				
	To my services.....		$20 00	$20 00	
			$20 55	$20 55	
	Seventh Bill.				
July 12	To cash paid for postage.....		08	08	
27	" " postage.....		03	03	
Aug. 28	" " postage.....		02	02	
Dec. 31	Interest for interest paid in advance...				
	My services.....		20 00		
	Balance due January 7th, 1840.....		$20 13		
1840.	*Eighth Bill.*				
Feb. 4	To cash paid for postage.....		08		
May 16	Pd. Anthony Hanson's bill, soap, &c.,	16	2 91	2 99	04
23	" postage.....		11	11	
June 16	" postage.....		08	08	
	To interest to July 1st, 1840.....		04	04	04
	Balance due July 1, 1840.....			$3 22	
	Ninth Bill.				
July 10	Sold bank stock $1,000; 14th, pd. $788; 23d, $200. Loss.....	10	18 85	18 85	55
	Interest to January 1st, 1841.....		55		
	Interest on interest paid in advance....		19		
	Balance due Jan. 1st, 1841.....		$19 59		

CR.

1839.					
Feb. 4	Cr. by cash for Heywood & Norton's note of F. B.....	4	$534 14	$534 14	$13 08
March 27	By cash for Norman & Steel's draft of J. Fairfield.....	27	250 00	250 00	3 92
					$17 00
	By interest to July 1st, 1839.....		17 00	17 00	
			$801 14	$801 14	
	Interest on interest paid in advance...		7 80		
			$808 94		
	Amount of Dr. to July 1st, 1839.....		20 55		
	Balance Cr. to July 1st, 1839.....		$783 39		

SUPREME COURT OF THE UNITED STATES.

ADOLPHUS DURANT, in Equity,
vs.
SAMUEL LAWRENCE et al.

It is agreed that certified copies of the exhibits referred to by the witness, George Rogers, in answer to the ninth direct interrogatory in his deposition, and now on file in this cause, in the circuit court of the United States, Massachusetts district, be made by the clerk of said circuit court, and transmitted to the clerk of the said Supreme Court as part of the record.

If at Mr. Durant's expense, agreed to.

E. MERWIN,
For Respondents.

Messrs. A. Durant & Co. in account with Adolphus Durant, Cr.

1836.		By rec'd of Seth Dewing, as follows: (See Dewing's acc't against Co.)							
May	16	cash	$100.	Aug.	6	cash	$100		
	23	"	30.		8	"	200		
	9	"	60.		15	"	100		
June	6	"	(4) 150	Sept.	14	"	600		
	10	"	75.		28	"	300		
	10	"	200.	Oct.	12	check	25		
	25	"	300.		20	(Gage)	150		
July	9	"	200.	Nov.	24	cash	41		
	21	"	30.				1,145		
								$2,661	00
	4	order to R. O. Sullivan - -						21	87
Nov.	24	cash pd. Joseph S. Morse					200		
		" check payable 3 m's					218		
								418	00
Dec.	10	cash - - -					350	00	
	23	" - - -					350	00	
1837.									
Jan.	7	" - - -					20	00	
	8	" - - -					170	00	
	17	" - - -					50	00	
	26	" - - -					200	00	
Feb.		" - - -					125	00	
								1,265	00
	22	order to S. Dewing, jr. - -						50	00
	23	order to J. S. Bartlett - -						40	00
Mar.	4	check on Chn. Bank - -						50	00
	28	order to R. O. Sullivan - -						143	20
	28	order to Eugene Sullivan -						14	00
May	1	check on Chn. Bank - -						50	00
	10	$100; 12th, $100 - -						200	00
Aug.	10	order to A. Barker - -						67	27
	10	order to D. Merrill, 2d - -						126	67
	10	order to A. Bodwell - -						63	20
									$5,170 21
Mar.	17	cash pd. order to J. Hoogs -						$60	00
		" Levi Bliss' bill goods -						97	53
		" order to Eben Gage -						32	61
1838.									
July	10	" int. on yr. orders to Barker, Merrill, and Bodwell - - -						11	91
									201 85

1836.					
July	13	By cash of Haywood & Norton's draft, at sight - - -		$120 00	
Nov.	10	12 reams of letter paper, of do.		34 25	
					$154 25
May	23	cash of Th. McKay for paper del'd,	3 42		
Dec.	23	" " "	10 00		
1837.					
June		" " "	15 00		
Sept.		" " "	29 50		
1836.				$57 92	
Nov.	15	(self) 1, for 33 lbs. paper sold,	4 12		
	18	" 2 r'ms to Gallishan,	8 00		
Dec.	15	" 4 r'ms to Goodwin,	13 75		
		" 1 r'm "	5 50		
				31 37	
					89 29
July	21	" 6 r'ms news, *a* $4, - -		24 00	
Aug.	10	" 10 4-5 r'ms, *a* $2 75 -		29 70	
1837.					
April	10	" 24 rm's *a* 12 1-2, - -		84 00	
	13	" 2 " P. C. Jones, -		9 00	
June	15	" 2 " broken post, *a* 2 75		5 50	
July	12	" 10 " post, 19 ea. *a* 2 50		25 00	
	24	" 16 " demi, 19 ea. *a* 3 25		52 00	
Sept.	8	" 14 " " 21 ea. *a* 3 50		49 00	
	12	" 100 " " 22 ea. *a* 3 50		350 00	
Oct.		" 12 " " 18 ea. *a* 3 00		36 00	
"		" 50 " " 19 ea. *a* 2 25		112 50	
					776 70
Dec.	5	Mill, for 1 cask lime sold Frye,		2 00	
	14	" " 800 lbs. coal, - -		4 80	
Jan.	1	" " 200 " " - -		1 00	
	1	S. Piper, for half ton coal, -		6 00	
					13 80
March		notes payable A. Durant & Co., 2 notes, Feb. 27, disc'd at Essex Bank, $500 ea., - - - -			979 50
					$7,385 60
1836.		By credits brot. forward - - - -			$7,385 60
Oct.	18	Pd. Joseph S. Morse for cart'g of lumber and iron from Boston to repair mill, included in his bill *vs.* Company, being for A. Durant - - - - -			27 18
Dec.	31	Iron, Methuen Co's. bill, in-			

		cluded in orders on S. Dew-			
1837.		ing for $104 20 paid by him - - -			$7 73
April	21	By S. J. Varney rec'd orders on S.			
		Dearborn, accept 6 mos. -		$40 72	
		Rec'd note a 6 mos. - -		117 00	
				$157 72	
		Less discount - - -		4 74	152 98
		Cash for balance - -		- -	28
		Gould & Newman, for their note			
		a 4 mos. - - - -	$406	397 08	
Oct.	13	Gould & Newman, for their			
		note a 6 mos. - -	290		
			180		
				470 00	
Sept.	30	Gould & Newman, bal. of acct.			
		settled - - - - -		901 12	
					1,768 80
Apr.	26	P. O. Richmond, bal. cash -		- -	10
June	10	Cash of Joseph Foster - -		$50 00	
"	29	" Joseph Foster, check on			
		Essex Bank - -		293 45	
Aug.	10	" Joseph Foster, order of			
		cash - - -		165 00	
					508 45
June	20	By cash of Stephen Barker's bill -		$4 00	
July	12	" W. & S. B. Ives -		75 00	
		" Chas. Ingalls, bal. acct.		6 58	
		" M. Messer, bill - -		8 00	
		" Thomas Webster, bill -		1 84	
Aug.	10	" R. Meacham's order for			
		rags $9 08, books a			
		$5 92 - - -		15 00	
Oct.	13	" P. C. Jones bill balan'd		40 26	
June	30	" Goodwin & Leonard's,			
		for their note - -		80 50	
"	30	" Goodwin & Leonard's			
		bal. acct. settled -		64 00	
"	30	Job Jenness, for bill rec'd of him		50 00	
July	1	Daniel Bixby, for bal. due from			
		him - - - - -		3 50	
		Thomas Churchill, bal. rec'd of			
		him - - - - -		3 19	
		Torrey & Blair's bill, 2 reams			
		paper - - - - -		7 50	
					$359 37
Sept.		Cash of C. & W. H. Magarge,			
		on account - - - - - -			200 00

1838.				
July 10	By Pd. Daniel Merrill *vs.* himself, included in amount of order $65, paid by Dewing - -		$25 67	
1841.				$25 67
Dec. 14	This amo. included in amo. chg'd by A. Durant in pay roll, and again includ'd in amo. of judgm't pd. Joshua Twing, and chg'd company $150, due as cash, July 1, 1837 - - - -			150 00
Say 1837.	The follow'g items order'd to be credited by referees, viz:			
June 30	Amount of stock of rags on hand June 30, 1837 - - -	$1,095 00		
	Sundry articles in mill, salts, screens, felts, oil, baskets, &c., &c., do., do. - - - -	161 45		
				1,256 45
	Allowed for expenses of repairs of mill, which A. Durant should pay, say blacksmith's work, lumber, &c., included in bills charg'd *vs.* Company in S. Dewing & A. Durant's ac'ts - - - - - -	$135 77		
	Proportion of premiums of insurances paid in 1836 and '37 by S. Dewing, and charg'd in his acc't *vs.* the company, including insurance, A. Durant's mill, as well as the stock, &c., $9,000 and $12,000, say $15,000.			
	$80 24			
	80 24			
		160 48		
				296 25
Sept. 4	A. Durant's draft in favor of R. G. Shaw & Co., dated and accepted by Co., and charged in S. Dewing's acct. with company - - - -	$377 84		
	Less unpaid on same, Feb. 7, 1843, as per statement of R. G. Shaw & Co., S. Dewing et als. note for this sum, being held as collateral or substi-			

	tuted for original d'ft, the diff. having been paid, $102 84 -	$275 00	
			$102 84
1837.	Amount - - - - - -		$12,241 70
March 4	To which add by cash of S. Dewing, March 4, '37, and omitted by S. Dewing, not cred'd by A. Durant on company's books. See remarks on debit side, as applying to this - - -		50 00
			$12,291 70

(B.)

DR. *Messrs. A. Durant & Co., in account with Adolphus Durant.*

1843.			
April 1	To amount as stated in acct., and marked "A," as filed with referees by A. Durant - - - - - -		$10,072 36
	To which add the following, viz:		
	Error in the addition - - -	$1 00	
			1 00
			$10,073 36
	Items in *pencil mark*, not extended nor added, viz:		
	Paid bail bond of Joshua Twing -	$1 90	
	Expenses of manufac'g paper, &c., from May 10th to June 30th, 1837, wood, &c. - - - - - -	125 00	
	Whole pay roll - - $4,276 35		
	Less chg'd May 10th - 3,667 25		
	Diff. pay roll from May 10th do. do.	609 10	
	Allowed for teaming and additional -	34 75	
	" " use of horse and chaise, &c. - - - - - - -	20 00	
	Proportion of assessm'ts $30 and $45		
	P'd insurance company at Worcester	46 05	
			836 80
	To which also add sundry errors, viz:		
	Short charge in J. H. Peabody's bill - - - - $86 30		
	76 46		
		9 84	
	Short charge in I. S. Morse's bill -	45	

April 1	Short charge in P. O. Richmond's bill - - - -	$113 69		
	Bal. - - - - -	87 75		
			$27 93	
	Short charge in J. Marshall's bill -		3	
				$38 25
	Total amount - - - - -			$10,948 41
	From which *deduct* the fol'g errors, viz:			
	Overcharge in Methuen Co.'s bill - - - - -	$7 25		
	Should be - - - - -	6 75		
			50	
	Overcharge in F. Frye's bill - -		70	
	Overcharge in E. Gage's bill, pd. by order on S. Dewing - - -		30 29	
	Overcharge on S. Steven's bill (lumber) - - - -	$50 00		
	Should be - - - -	47 07		
			2 93	
	Overcharge, So. Boston Iron Company, *old iron*, not deducted -		16 83	
	Overcharge of int. do. bill -	$26 48		
	Less proportion allowed -	9 24		
			17 24	
	Overcharge of item, "my expenses" - - -	$150 00		
	Less allowed by referees -	75 00		
			75 00	
	Wrong charge of int. on acct., *nothing due*, the bal. being against A. Durant - - - - - - -		80 40	
				223 89
	Leaving - - - - - - -			$10,724 52
	From which *deduct* the following items, the allowance of which depending on the profit of the business, and there being no *profit*, but a *great loss*, as the statement marked shows, the charges are excluded wholly:			
	Rent of mill - - - - -		$1,333 33	
	Amount paid himself, included in the items of pay roll -	$3,667 25		
		609 10		
		$4,276 35		

April 1	From May 10th to June 30th, '37 -		$919 78	
				$2,253 11
	Net total sum of A. Durant's charge *vs.* Co. - - - - - - -			$8,471 41
	To which may be added the following items, by consent of the parties, or if the terms of the agreement of submission of the accts. to the award of the referees *shall permit* the same being proper charges against the company, and omitted altogether in A. Durant's account marked "A," filed with the referees, viz:			
	S. Angier's bill - - - -		$2 50	
		$2 60		
	Weston & Powell's, -	2 50		
			5 10	
	Annis & Dudley, - - -		5 00	
	Wm. Swan, paid him cash $30, less bal. acc't due from him and settled by A. Durant, $8 26, - -		21 74	
				34 34
	Total, - - - - - - -			$8,505 75
	*Balance due without interest, - - -			3,785 95
				$12,291 70
	(Against which the company is to be credited with the items had and received by A. Durant, as follows:			
1843.	(see next page, credit side,)			
Apr. 1	*By bal. brought down due from Durant, - - - - -		$3,785 75	
	By interest bal. acc't to date, - -		1,176 66	
				4,962 61
	To which add, if the articles of submission allow, A. Durant's receipt to J. Foster, March 25th, 1839, -		600 00	
	Interest on same to April 1, 1843, -		147 00	
			747 00	
	From which *deduct*—			
	Pd. by A. Durant, Norman & Steel's accept. of $500; Mar. 1st, 1839,			

to Charlestown Bank and charges, $56 25, - - -	556 25		
Interest on same to April 1st, '43, - - -	133 50		
		$689 75	
			$57 25
Bal. of indebtedness then - - - -			$5,019 86
To which add one half bal. of *loss* per acc't, see J, by partnership business, - - - - - - - -			4,006 45
			$9,026 31
Per acct. further the balance of Fourdenier machine, as agreed upon by the parties, and left in the mill at dissolution of partnership, and taken by A. Durant, - - - - - -			3,500 00
The said amt. being deducted from *mill acct.* before making up the *loss* of the partnership business, as			$12,526 21
To which add balance due to R. G. Shaw & Co. *on his own account*, with interest to Feb. 7th, '42, for which the company is responsible, See acct.		- -	858 26
Total bal. due from A. Durant, Errors excepted.		- -	$13,384 57

(Signed) GEO. ROGERS, *Auditor.*

Boston, April 1, 1843.

(B.)

DR. *Messrs. A. Durant & Co. in account with Adolphus Durant.*

1843.				
April 1	To amount as stated in acct., and marked "A," as filed with referees by A. Durant - - - - -			$10,072 36
	To which add the following, viz., error in the addition - - -		$1 00	1 00
				$10,073 36
	Items in *pencil mark* not extended nor added, viz:			
	Paid bail bond of Joshua Twing -		$1 90	
	Expenses of manufacturing paper, &c, from May 10th to June 30th, 1837—wood, &c. - - - -		125 00	
	Pay roll from May 10th to do. do. -		609 10	
	Allowed for teaming, and additional -		34 75	
	" use of horse and chaise, &c. - - - - - - -		20 00	
	Proportion of assessm'ts $30 and $45 Paid Insurance Co. at Worcester -		46 05	
				836 80
	To which also add sundry errors, viz: *Short charge* in J. H. Peabody's bill - - - - -	$86 30		
		76 46		
			$9 84	
	Short charge in I. S. Morse's bill -		45	
	Short charge in P. O. Richmond's bill - - - - -	$113 69		
	Balance - -	85 75		
			$27 93	
	Short charge in J. Marshall's bill -		03	38 25
	Total amount - - - -			$10,948 41
	From which *deduct* the following errors, viz:			
	Overcharge in Methuen Co.'s bill - - - - -	$7 25		
	Should be - -	6 75		
			50	
	Overcharge in F. Frye's bill - -		70	
	Overcharge on E. Gage's bill, paid by order on S. Dewing - -		30 90	

April 1	Overcharge on S. Steven's bill, (lumber) - - - -	$50 00		
	Should be - -	47 07		
			$2 93	
	Overcharge So. Boston Iron Co., *old iron* not deducted - - -		16 83	
	Overcharge of int. do. do. do. bill - - - -	$26 48		
	Less proportion allowed -	9 24		
			17 25	
	Overcharge of item, "my expenses" - - -	$150 00		
	Less allowed by referees -	75 00	75 00	
	Wrong charge of int. on acct.; *nothing due*, the balance being against A. Durant - - - - -		80 40	$323 89
	Leaving - - - - -			$10,724 52
	From which *deduct* the following items, the allowance of which depending on the profit of the business, and there being no *profit*, but a *great loss*, as the statement marked shows, the charges are excluded wholly:			
	Rent of mill - - - - -		$133 32	
	Amount paid himself, included in the items of pay roll -	$3,667 25		
		609 10		
		$4,276 34		
	From May 10th to June 30th, '37 -		919 78	2,253 11
	Net total sum of A. Durant's charge *vs.* Co. - - - - -			$8,471 41
	To which may be added the following items, by consent of the parties; or if the terms of the agreement of submission of the accts. to the award of the referees *shall permit* the same being proper charges against the Company, and omitted altogether in A. Durant's account, marked "A," filed with the referees, viz:			

	S. Anger's bill		$2 50	
		$2 60		
	Weston & Powell's	2 50		
			5 10	
	Annis & Dudley		5 00	
	Wm. Swan, paid him cash $30, less bal. acc't due from him and settled by A. Durant	$8 26	21 74	
				$34 34
	Total			$8,505 75
	*Balance due without interest			3,785 95
				$12,291 70
	(Against which the company is to be credited with the items had and received by A. Durant, as follows: see next page, credit side)			
1843. Apr. 1	*By bal. brought down due from Durant		3,787 95	
	By interest bal. acc't to date		1,176 66	
	To which add, if the articles of submission allow, A. Durant's receipt to J. Foster, March 25th, 1839		600 00	4,962 51
	Interest on same to April 1, 1843		147 00	
			747 00	
	From which deduct, Pd. by A. Durant, Norman & Steel's accept. of $500; March 1st, 1839, to Charlestown Bank and charges,	$556 25		
		556 25		
	Interest on same to April 1st '43	133 50		
			689 75	
				$57 25
	Balance of indebtedness then			$5,019 86
	To which add one-half balance of loss per acc't; see J, by Partnership business			4,006 45
				$9,026 31
	Per acc't further balance of Fourdenier machine, as agreed upon by			

		the parties, and left in the mill at dissolution of partnership and taken by A. Durant - - - -		$3,500 00
April	1	The said amount being deducted from mill acc't before making up the loss of the partnership business—as - - - - - -		12,526 21
		To which add balance due to R. G. Shaw & Co., on his account, with interest to Feb. 7th, '42, for which the company's responsible - -		858 26
		See acc't. Total balance due from A. Durant - - - - -		$13,384 57

Cr.

1836.		By rec'd of S. Dewing, as follows—(See Dewing's acct. against Co.):				
May	16	Cash	$100.	Aug. 6, cash	$100	
	23	"	30.	8, cash	200	
	9	"	60.	15, cash	100	
June	6	"	(4)150.	Sept. 14, cash	600	
	10	"	75.	28, cash	300	
	10	"	200.	Oct. 12, check	25	
	25	"	300.	20, (Gage)	150	
July	9	"	200.	Nov. 24, cash	41	
	21	"	30.		1,145	
						$2,661 00
	4	" order to R. Sullivan - -				21 87
Nov.	24	Cash paid Joseph L. Morse -			$200	
		" check payable in 3 months - - - -			218	
						418 00
Dec.	10	Cash - - - -			$350 00	
	23	" - - - -			350 00	
1837.						
Jan.	7	" - - - -			20 00	
	8	" - - - -			170 00	
	17	" - - - -			50 00	
	26	" - - - -			200 00	
Feb.		" - - - -			125 00	
						1,265 00
	22	" order to S. Dewing, jr. -				50 00
	23	" order to J. S. Bartlett -				40 00
March	4	" check on Chn. Bank -				50 00
	28	" order to R. O. Sullivan -				143 20
	28	" order to Eugene Sullivan -				14 00

May	1	Cash,	check on Chn. Bank -		$50 00	
	10	"	$100; 12th, $100 -		200 00	
Aug.	10	"	order to A. Barker -		67 27	
	10	"	order to D. Merrill, 2d -		126 67	
	10	"	order to A. Bodwell -		63 20	
						$5,170 24
March	17	Cash p'd order to J. Hoogs -			$60 00	
		"	Levi Bliss' bill goods -		97 33	
		"	order to Eben Gage -		32 61	
1838.						
July	10	"	int. on yr. orders to Barker, Merrill & Bodwell -		11 91	
						201 85
1836.						
July	13	By cash of Haywood & Norton's draft, at sight - - -			$120 00	
Nov.	10	"	12 reams of letter paper of do. -		34 25	
						154 55
May	23	"	cash of Thos. McKay, for paper delivered - -	$3 42		
Dec.	23	"	do. do.	10 00		
1837.						
June		"	do. do.	15 00		
Sept.		"	do. do.	29 50		
					$57 92	
1836.						
Nov.	15	"	(self) 1, for 33 lbs. paper sold	$4 12		
	18	Charge "	2 r'ms to Gallishan	8 00		
Dec.	15	" "	4 r'ms to Goodwin	13 75		
		" "	1 r'm to Goodwin	5 50		
					31 37	
						89 29
July	21	" "	6 r'ms news., *a* $4 00 -		$24 00	
Aug.	10	" "	10 4-5 r'ms news., *a* $2 75		29 70	
1837.						
April	10	" "	24 r'ms *a* 12½ - - -		84 00	
	13	" "	2 " P. C. Jones - -		9 00	
June	15	" "	2 " brok. post, *a* $2 75		5 50	
July	12	" "	10 " post, 19 lbs. *a* 2 50		25 00	
	24	" "	16 " demi 19 lbs. *a* 3 25		52 00	
Sept.	8	" "	14 " demi 21 lbs. *a* 3 50		49 00	
	12	" "	100 " demi 22 lbs. *a* 3 50		350 00	
Oct.		" "	12 " demi 18 lbs. *a* 3 00		36 00	
		" "	50 " demi 19 lbs. *a* 2 25		112 50	
1837.						776 70
Dec.	5	"	mill for 1 cask lime sold Frye -		$2 00	
	14	" "	800 lbs. coal - -		4 80	
Jan.	1	" "	200 lbs. coal - -		1 00	
	1	"	S. Piper, for half ton of coal -		6 00	
						13 80

March	By notes payable A. Durant & Co.— 2 notes, Feb. 27, disc'd at Essex Bank, $500 each - - -			$979 50
				$7,385 60
1836.	By credits brought forward - -		- -	$7,385 60
Oct. 18	Pd. Joseph S. Morse for carting of lumber and iron from Boston, to repair mill, included in his bill *vs.* company, being for A. Durant -		- -	27 18
Dec. 31	Iron, Methuen Co.'s bill included in orders on S. Dewing, for $104 20 paid by him - -		- -	7 73
1837.				
April 21	S. J. Varney rec'd order on S. Dearborn, accepted, 6 mos. -		40 72	
	rec'd note, a 6 mos. - -		117 00	
			$157 72	
	Less discount - - -		4 74	152 98
	Cash for balance - - -		- -	28
	Gould & Newman, for their note, a 4 mos. - - -	$406	397 08	
Oct. 13	Gould & Newman, for their note, a 6 mos. - -	290		
		180		
			470 00	
Sept. 30	Gould & Newman, bal. of acc't settled - - - - - -		901 12	
				1,768 80
April 26	P. O. Richmond, bal. cash -		- -	10
June 10	Cash of Joseph Foster - -		50 00	
29	" of do. check on Essex Bank - - - -		293 45	
Aug. 10	" of do. order of cash -		165 00	
				508 45
June 20	" of Stephen Barker's bill -		4 00	
July 12	" of W. & S. B. Ives -		75 00	
	" of Chas. Ingall's bal. acc't		6 58	
	" of M. Messer's bill - -		8 00	
	" of Thos. Webster's bill -		1 84	
Aug. 10	" of R. Meacham's order for rags, $9 98; books, a $5 92 - - -		15 00	
Oct. 13	" of P. C. Jones' bill bal'd -		40 26	

June 30	By cash of Goodwin & Leonard's, for their note - -	$80 50		
30	" of Goodwin & Leonard's bal. acc't settled - -	64 00		
30	Job Jenness, for bill received of him - - - - - -	50 00		
July 1	Daniel Bixby, for bal. due from him - - - - - -	3 50		
	Thos. Churchill, bal. rec'd of him	3 19		
	Torrey & Blair's bill, two reams paper - - - - - -	7 50		
				$359 37
Sept.	Cash of C. & W. H. Magarge, on account - - - - - - -			200 00
1838.				
July 10	Pd. Daniel Merrill *vs.* himself included in amount of order, $65, paid by Dewing - - -	25 67		
				25 67
1841.				
Dec. 14	This amount included in amount charged by A. Durant in pay roll, and again included in am't of judgment paid Joshua Twing, and charged Company $150; due as cash, July 1, 1837 - - - - - - - -			150 00
	By the following items ordered to be			
Say	credited by referees, viz:			
1837.				
June 30	By amount of stock of rags on hand, June 30, 1837 - - -	1,095 00		
	sundry articles in mill, salts, screens, baskets, &c., &c., do.			
	do. - - - - - -	161 45		
				1,256 45
	Allowed for expenses of repairs of mill, which A. Durant should pay, say, blacksmith's work, lumber, &c., included in bills charged *vs.* Company in S. Dewing & A. Durant's accounts - - - -	135 77		
	By proportion of premiums of insurances paid in 1836 and '37, by S. Dewing, and charged in his account *vs.* the Co., included insurance, A. Durant's mill as well			

	as the stock, &c., $9,000 and $12,000, say $15,000 - 80 24		
	80 24		
		$160 48	
			$296 25
Sept. 4	By A. Durant's draft in favor of R. G. Shaw & Co., dated and accepted by Company, and charged in S. Dewing's acc't with Com'y	377 83	
	By less unpaid on same, February 7, 1843, as per statement of R. G. Shaw & Co., S. Dewing et als. note for the same being held as collateral, or substituted for original draft, the difference having been paid, $102 84 - - - -	275 00	
			102 84
	Amount - - - -		$12,241 70
1837.			
March 4	To which add by cash of S. Dewing, March 4, 1837, and omitted by S. Dewing, not credited by A. Durant on Company's books. See remarks on debtor's side, as applying to this - - - - -		50 00
	Errors excepted.		$12,291 70

Boston, April 1, 1843.
(Signed) GEO. ROGERS, *Auditor.*

(D.)

Dr. *Messrs. A. Durant & Co. in account with Seth Dewing.*

1837.			
Jan'y 1	To bal. due me on 1st acct. at this date, (see "C," No. 1) - -	$4,609 42	
	Less chg'd for services *deducted*	257 00	
			$4,352 42
July 1	To bal. due me on 2nd acct. at this date, (see "C," No. 2) - -	2,284 79	
	Less chg'd for services - -	200 00	
			2,084 79
1838.			
Jan'y 1	To bal. due me on 3d acct. at this date, ("C," No. 3) - - -	7,128 44	
	Less chg'd for services - -	200 00	
			6,928 44

July 1	To bal. due me on 4th acct. at this date, ("C," No. 4) - - -	$1,182 01		
	Less chg'd for services - -	60 00		
1840.			$1,122	01
Jan'y 1	To bal. due me on 7th acct. at this date, ("C," No. 6) - - -	20 13		
	Less chg'd for services - -	20 00		13
July 1	To bal. due me on 7th acct. ("C,"			
1841.	No. 6) - - - - - -	3 22	3	22
Jan'y 1	To bal. due me on 9th acct. ("C," No. 6) - - - - - -	19 59	19	59
			$14,510	60
Dec. 1	To cash pd. Joshua Twing on execution and bail bond, (see acct. "C," No. 1,) as filed with referees - -		162	82
			$14,673	42
Dec.	To balance brought down - - -		$13,283	40
	To which add *errors of credit* in acct. viz., of Spear, Mudge & Co.'s acceptance, the same received by Jos. Foster and credited in his acct. with company, 194 27, and interest 13,	194 40		
	of C. & W. H. Magarge's note, rec'd by Joseph Foster and credited in his acct. with company, (March 16th, '38, acct. 4th,) $233 11, and int. amounting $4 08 - -	237 19		
			431	59
	Balance - - - -		$13,714	99
	From which deduct, chg'd in acct. No. 3, as paid to R. G. Shaw & Co., 1837, Sept. 3, accept'e A. D. dft. for $377 84, less paid $104 84	275 00		
	Oct. 13, accept'e A. D. & Co. for $1,008 73, less paid $8 73; the same being unsettled at this date; the securities chg'd with same collateral by other notes, either of S. Dewing or the Co., on Co.'s endorsement, the Co. being still held responsible for any balance due -	1,000 00	1,275	00
	Balance - - - -		$12,439	99

Dec.	From which deduct the following items received of him by Heywood & Norton, and omitted in his accts. viz.:		
	Geo. Willis's note, Oct. 12th, at 6 mos., $465 11, dis. a cash Nov. 11th, 1837, - - - - -	$465 02	
	Cash of them Dec. 25th, 1837 -	370 00	
	Cash of them Feb. 6th, 1838 -	318 19	
		$1,153 21	
	From which deduct check to A. Durant, March 4, '37, on Charlestown Bank, credited by A. Durant, and *and* omitted by S. Dewing - -	50 00	
			$1,103 21
	Balance due (after correction of errors) to S. Dewing - - - - -		$11,336 78
1843. April 1	To which add int. on bal. due him to date - - - - - - - -		3,935 92
	Bal. due with int. - - - -		$15,272 70

CR.

1839. Jan'y 1	By bal. due company on 5th acct. ["C" No. 5] - - - - -	561 63	
	To which add services chg'd deducted - - - - -	20 00	
			581 63
July 1	By bal. due company on 6th acct. ["C" No. 6] - - - -	788 39	
	To which add services ch'd deducted - - - - -	20 00	
			808 39
			1,390 02
	Bal. carried down, without int. - - -		13,283 40
			$14,673 42
	To amount due Seth Dewing brought up - - - - - - - -		15,272 70
	To which may be added, by consent of parties, [or if the terms of articles of agreement to submission to the referees will allow,]		

the same being proper charges *vs.* the company, and omitted altogether on S. Dewing's accounts, filed with referees, &c., viz:

1841.				
Dec. 14	To pd. John Tenney, esq., bill *vs.*			
1839.	company - - -		$47 75	
Jan'y 1	" Joseph Foster's bill, expenses to Lowell, Methuen, &c., several times, respecting			
1842.	notes of company - -		34 91	
Sept.	" Geo. Rogers for services in examination of books and accounts in 1840 - -		25 00	
Sept.	" Expenses of a suit of Essex Bank respecting note -		28 75	
	" Rand & Fiske, counsel fees, &c., same suit - -		65 00	
			201 41	
	Add interest on the above items to April 1st, 1843 - - - - -		13 47	
				124 88
	Total bal. due Seth Dewing - - -			$15,487 58
	From which is to be deducted his quarter-part of the *loss* in the partnership business - - - - - -			2,003 22
	Errors excepted.			$13,484 36

Boston, April 1st, 1843.

(Signed) GEO. ROGERS, *Auditor.*

N. B.—There is also a debt due from the company to R. G. Shaw & Co., Feb. 7th, 1843, of which S. Dewing should pay one-quarter part. In addition to which A. Durant owes R. G. Shaw & Co., on his own acct., $858 26, for which the company are liable.

Paper marked D, annexed to the deposition of Geo. Rogers.

(Signed) G. S. HILLIARD, *Commissioner.*

(F.)

DR. *Messrs. A. Durant & Co. in account with Joseph Foster.*

1837.			
June 10	To cash paid A. Durant - - -	$50 00	
" 29	" " Durant's chk. Essex B'k, July 3 - - - -	393 45	
Aug. 10	To cash pd. Durant's chk. Essex Bk., July 3 - - - - - -	165 00	
			$508 45

Aug. 10	To int. acct. Sep. 22d, pd. disc. on Magarge & Turner's notes - -		$10 52		
1838.	Dec. 27th, Spear, Mudge & Co. -		5 75		
Mar. 15	Collecting, Turner & Wheelwright -		6 30		
" 19	Discount by Otis, Broder & Co. -		2 63		
" 19	" Hilliard, Gray & Co. -		15 00		
Apr. 6	" Otis Spear - - -		7 12		
" 7	" C. & W. H. Magarge -		14 41		
" 28	" Turner & Wheelwright		12 45		
					$74 18
May 15	" To Geo. Welles, pd. for his note at Dedham Bank, being renewed for bal. of note, Oct. 12th, a 6 mos., 465				
1839.	11, and protest - - - -				304 89
Jan. 5	To pd. Charlestown Bank for Heywood & Norton's acceptance -		$700 00		
	To Heywood & Norton's note -		1,000 00		
			$1,700 00		
	Less pd. by Heywood & Norton, bal. ac. - - - - - -		1,190 00		
			$510 00		
	Add interest, protest, and expenses -		141 19		
					651 19
	To notes payable:				
	Pd. A. Durant & Co.'s note to John Tenney, of Feb. 27th, '37, a 3 mos. - - - - - -		$500 00		
	Pd. a Essex Bank, Feb. 27th, '37, a mos. - - - - - -		500 00		
					1,000 00
	To services—*nothing allowed.*				$2,538 71
	To bal. due from Jos. Foster, carried forward - - - - - -				304 52
					$2,843 23
March 1	To cash pd. sundry expenses at various times, going to Methuen and Lowell, and other places, on business of the company - - - - -				20 25
	To cash—Arthur W. Austin's services, and advice at the time of failure of Heywood & Norton, allowed by referees - - - - -				125 00

March 1	To cash—pd. dis. or exchange on Turner & Wheelwright's notes, 1838, omitted - - - - - - -		$14 00
Mar. 25	To A. Durant, pd. on acct., per receipt, March 26th, 1839 - - - -		600 00
			$759 25
1843.			
April 1	To balance due Jos. Foster - - - -		$416 31
" "	of int. to April 1st, 1843 - -		16 09
			$432 40
" "	due from Jos. Foster - - -		1,570 82
			$2,003 22

Errors excepted.

Boston, April 1st, 1843.

1837.	Cr.		
Sept. 20	By C. & W. H. Magarge's note, Sept. 14th, a 2 months -		$231 92
	Norman & Steele, for note of Turner, Sept. 14th, a 2 months		86 50
	Norman and Steele for Turner and Fisher's note, Sept. 14th, a 4 months - - -		86 50
Dec. 27	Spear, Mudge & Co.'s accept. Dec. 16th, a 4 months -		200 00
	C. & W. H. Magarge's note of Nov. 24th, a 5 months -		237 55
1835.			
M'ch 15	Turner & Wheelright's note, March 14th, a 60 days -		215 02
" 19	Heywood & Norton rec'd Otis Broader's note Jan. 24, 6 mos.		124 00
	Heywood received Hilliard & Gray's note March 17th, a 9 months - - - - -		357 50
April 6	C. & W. H. Magarge's note, a 6 mos. (bal. 9 mo.) - -		480 55
" 7	Spear, Mudge & Co. for Otis Spear's acceptance, April 7th, a 6 mos. - - - -		178 05
" 28	Turner & Wheelwright, for invoice of rags rec'd of them, - - - - $495 42		
	Sold to Grant & Daniel per note April 28th, a 6 mos. - -	$165 34	

April 28	Sold to Grant & Daniel per note April 28th, a 6 mos. - -	$250 00	
			$415 34
	N. B. diff. Dewing dis. 7 1-2, 37 08 - -	$80 08	
		$415 34	
	Pd. Turner & Wheelright $1 00		
	Pd. Grant & Daniel expenses, 42 00, Philadelphia - -	495 42	
April 21	By cash of Heywood & Norton -		201 00
" "	cash of Heywood & Norton, bal. acc't with S. Dewing - -		29 29
			$2,843 23
1839. Jan. 1	By bal. brought down, (see his acc't "E," as filed) - - -		304 52
1843. Jan. 1	cash rec'd 10, acc't divided on Geo. Willis' note and interest, 384 20, is - - - -		38 42
			342 94
April 1	balance carried forward - - -		416 31
			$759 22
1843. April 1	By profit and loss for one quarter part of loss by partnership business, as per acc't. - - -		2,003 22
			$2,003 22

(Signed) GEORGE ROGERS, *Auditor.*

Paper marked F, annexed to the deposition of Geo. Rogers.

(Signed) G. S. HILLIARD, *Comm'r.*

UNITED STATES OF AMERICA.

Circuit Court of the U. S., Massachusetts Dist.

I, Henry W. Fuller, clerk of the circuit court of the United States, for the first circuit and district of Massachusetts, do hereby certify that the foregoing are true copies of the several documents, bills, papers and accounts specified in the annexed writ of certiorari, and that the originals thereof were used in evidence at the hearing of the cause in equity in this court, wherein Adolphus Durant was plaintiff, and Samuel Lawrence & als. were defendants—which case was removed by appeal

to the Supreme Court of the United States. And I do further certify that the same were omitted in my certificate of evidence accompanying the record, the counsel not having then caused the same to be marked as filed in this court, but having since by agreement caused the same to be so done.

And no further omissions have been discovered on search made, pursuant to said writ of certiorari.

[SEAL.] In testimony whereof I have hereunto set my hand and the seal of said circuit court, this sixth day of November A. D. 1856.

H. W. FULLER, *Clerk.*